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MORNING SESSION

JUNE 10, 2021

(The following occurred outside the presence of the jury.)

THE CLERK: I am going to let everybody in now, the attorneys.

Good morning, counsel. Looks like we have Mr. Gard on standby in the waiting room, ready to go.

THE COURT: Mr. Whitehead, you are blue like Ms. Mell today, but not quite a match. It is complementary colors anyway.

Are we all ready to go this morning?

MS. CHIEN: Your Honor, we have a couple preliminary issues that we wanted to flag for the Court. First, on a scheduling issue, our building is having a fire alarm at 10:15. If at all possible, that might be a good time for a break because we have to evacuate our building.

Second, we want to have hopefully a conference outside the presence of the jury regarding the L&I witnesses that GEO seeks to offer testimony on, which is all to testify in a backdoor way of getting around the Court's order dismissing their laches defense, their unclean hands defense, their statute of limitations defense, and this Court's order excluding exhibits regarding internal emails.

So I don't know when you would like to do that, have that conference, but we want to flag that before the L&I witnesses

1 are identified and testify.

2 THE COURT: Let's go with what we've got, and when
3 it's time to make a motion or whatever, we'll deal with it.

4 MS. CHIEN: Okay. Thank you.

5 MR. POLOZOLA: Your Honor, I have one more brief
6 issue the parties had discussed. At the beginning of trial,
7 you asked the parties to consider how the admitted facts
8 should come in. We have discussed this, and the plaintiffs
9 have uploaded as Exhibit 609 the admitted facts which the
10 parties have agreed to. So we would request that the Court
11 place Exhibit 609 in the file, or in the record.

12 THE COURT: Well, I take it you are offering an
13 exhibit?

14 MR. POLOZOLA: Correct, Your Honor.

15 THE COURT: I saw that this morning. Aren't those
16 agreed facts rather than admitted facts?

17 MR. POLOZOLA: They are agreed facts. The parties
18 have added, to streamline issues, facts to which each side
19 has admitted, Your Honor.

20 THE COURT: Should not the exhibit call them "agreed
21 facts" rather than "admitted facts"?

22 MR. POLOZOLA: We can certainly update it to say
23 "agreed facts," Your Honor and re-upload it as Exhibit 609.
24 We just wanted to bring it to the Court's attention that we
25 had discussed the issue and that would be our proposed

1 approach.

2 THE COURT: Okay. Anything else on that?

3 MR. SILVERMAN: Not on that, Your Honor, but I have
4 one procedural question.

5 THE COURT: Wait a minute. One thing at a time.

6 MS. SCHEFFEY: Your Honor, I want to make sure we
7 have the right copy. As long as it is everything we
8 discussed before, we can upload it.

9 THE COURT: I think the exhibit should be called
10 agreed facts rather than admissions. So I would entertain
11 the admissibility of that exhibit when that is changed on the
12 cover page and on the next page. It appears twice. Change
13 the word from "admitted" to "agreed" in two places. And with
14 that change, that may be admitted, but I will need to tell
15 the jury that it is admitted.

16 MR. POLOZOLA: Certainly. We will get that corrected
17 and uploaded and we will, of course, copy you, Adrienne and
18 team, so that you are aware.

19 Thank you, Your Honor.

20 THE COURT: What else? Now, Mr. Silverman, you had
21 something?

22 MR. SILVERMAN: Yes, Your Honor. I just wanted to
23 note that the State has indicated this is their last witness
24 and then we are going to make our Rule 50 DV motion.

25 In terms of the Court's preference for the logistics of

1 that, if we were in Court I would walk up and I would hand up
2 a copy while making our argument. What's the Court's
3 preference in terms of the logistics of how you would like us
4 to proceed with our Rule 50 motion?

5 THE COURT: It makes some sense to me if you wait
6 until both plaintiffs rest.

7 MR. SILVERMAN: Okay. Is there an additional witness
8 that the private plaintiffs are putting on after Mr. Gard?

9 THE COURT: I don't know. Nobody has rested yet.

10 MR. SILVERMAN: Once we move, I don't want to waste
11 jury time. What is your preference in terms of me making the
12 Rule 50 motion into the record so we cannot -- so they can go
13 out and do what they are going to do?

14 THE COURT: Just do it like you are in court.

15 MR. SILVERMAN: Okay.

16 THE COURT: If you have something you want me to
17 read, file it in whatever way we get it, just like every
18 other document.

19 MR. SILVERMAN: Thank you, Your Honor.

20 THE COURT: Anything else preliminary?

21 Bring in the jury and the witness, Mr. Gard.

22 THE CLERK: They are on their way in, Your Honor.

23 (The following occurred in the presence of the jury.)

24 MS. SCHEFFEY: May I proceed?

25 THE CLERK: We are still waiting on one juror. There

1 we go. Okay. Now all the jurors are all present.

2 THE COURT: Where is Mr. Gard? There you are. Okay.
3 You are right in front of me. I didn't see you, Mr. Gard.
4 All right. I believe the State had finished its direct
5 testimony.

6 MR. POLOZOLA: Correct, Your Honor.

7 THE COURT: Go to cross-examination.

8 CROSS-EXAMINATION

9 BY MS. SCHEFFEY:

10 Q Mr. Gard, thank you for coming back today. I wanted to
11 clarify a few things with you. You have never worked for the
12 Northwest ICE Processing Center, correct?

13 A Never worked for who? Sorry.

14 Q The Northwest ICE Processing Center.

15 A No, I never have.

16 Q You have no firsthand knowledge of the operations of the
17 voluntary work program at that facility, correct?

18 A I do not.

19 Q You are not a former detainee of that facility, right?

20 A I am not.

21 Q You work at the Employment Security Division, correct?

22 A Employment Security Department, yes.

23 Q Does your department help track how many unemployed
24 individuals there are in Tacoma?

25 A Through the unemployment roles, Employment Security does

1 track how many people are unemployed and what -- through
2 sectors as well, I believe. That piece is above me so...

3 Q Do you know if the unemployment division counts
4 individuals at the Northwest ICE Processing Center as
5 unemployed?

6 A I have no direct knowledge of that.

7 Q Do you have any knowledge of who is included generally in
8 the unemployment bucket when they say someone is unemployed?

9 A Individuals who have filed for unemployment.

10 Q Do you have any knowledge about whether your agency as a
11 state government entity is required to buy its office
12 equipment from correctional industries?

13 A I know we have office equipment that comes from
14 correctional industries, but I don't know what the contract
15 is.

16 Q Some of your office equipment in your office where you
17 work comes from correctional industries, correct?

18 A It does.

19 MR. POLOZOLA: Your Honor, I would object. This is
20 well beyond the scope of what Mr. Gard testified to.

21 THE COURT: I think it is beyond the scope.

22 BY MS. SCHEFFEY:

23 Q You testified yesterday you have helped people in the
24 restaurant and hospitality industries find jobs, correct?

25 A That is correct.

1 Q Does the hospitality industry typically include prisons
2 and detention centers?

3 A I can't directly answer that. To me, I guess the
4 hospitality is hotels, motels, anybody that would employ the
5 types of occupations that I was asked about yesterday.

6 Q Okay. When you think of the hospitality industry, you
7 don't think of prisons, right?

8 A Prison does not immediately come to my mind when I think
9 of hospitality.

10 Q What about the restaurant industry? When you think of the
11 restaurant industry, do you immediately think of detention
12 centers?

13 A No, I don't.

14 Q You testified yesterday that you typically pair custodial
15 workers with hotels, hospitals and local schools as we just
16 discussed; is that right?

17 A Yes, that is correct.

18 Q In your experience, do local hotels typically require a
19 government security clearance for custodians?

20 A No.

21 Q What about hospitals?

22 A Security clearance, no. There is a limit to the
23 individuals that can work in that. For instance, reentry,
24 those that have been formally incarcerated, things like that,
25 individuals of that nature.

1 Q You are saying people who have been formally incarcerated
2 cannot work in hospitals?

3 A May not due to background. Not security clearance, but
4 background.

5 Q In your personal experience with the people you have
6 worked with, how many of them have had trouble finding a
7 position because of their background?

8 A We see reentry people on a regular basis, just as
9 involved. I couldn't give you a number.

10 Q Is it more than half or less than half of the dozens of
11 people you have worked with?

12 A Less than half.

13 Q Those people typically have criminal records, correct?

14 A If they are justice involved, they would have criminal
15 records, yes.

16 Q If they applied for a government security clearance that
17 required them not to have a criminal record, they couldn't
18 meet those requirements, correct?

19 MR. POLOZOLA: Objection, foundation, Your Honor.

20 THE COURT: Sustained.

21 BY MS. SCHEFFEY:

22 Q You testified you see people by appointment or walk in who
23 are seeking jobs; is that correct?

24 A That is correct.

25 Q Have you ever gone to the Northwest ICE Processing Center

1 to try and help place detainees in jobs?

2 A I have not.

3 Q What about the Special Commitment Center on McNeil Island?

4 A I have not.

5 Q What about the local jails and prisons?

6 A We have had a presence from Employment Security Department
7 at the local jail.

8 Q Is that to help them with correctional industries?

9 MR. POLOZOLA: Objection, Your Honor, scope again.

10 THE COURT: He may answer.

11 THE WITNESS: Could you repeat the question?

12 BY MS. SCHEFFEY:

13 Q Is that to help them with correctional industries?

14 A No, it is to help them find employment on release or
15 shortly after release.

16 Q You testified that you tried to find people a living wage
17 job yesterday. Do you remember that?

18 A I do.

19 Q A living wage job is one that would pay for an
20 individual's food, housing, clothing and other basic
21 necessities, right?

22 A Yes.

23 Q You also testified that if 85 new jobs became available in
24 Tacoma, you would not be surprised because that would be a
25 low number right now. Do you remember that?

1 A I do.

2 Q Isn't it true that in Washington, there is currently a
3 shortage of workers willing to fill service industry jobs?

4 A We are finding there is a low census of workers, yes.

5 Q When you say "low census of workers," are you saying there
6 are more jobs than there are job seekers?

7 A That is what I am saying.

8 Q So the people that you help -- you talked about helping
9 dozens of people. Do you remember that?

10 A I do.

11 Q The people you help, they are typically receiving
12 unemployment benefits, correct?

13 A That is not accurate. We serve everybody.

14 Q Do you help people who are receiving unemployment
15 benefits?

16 A We do.

17 Q Some of the dozens of people that you have helped who are
18 receiving unemployment benefits have an obligation to look
19 for work, correct?

20 A Not at this time.

21 Q Not at this time?

22 A The job search is waived for this period of time during
23 COVID. In typical times, they would be required to look for
24 three jobs each week, or three job search activities.

25 Q So prior to COVID, you helped people who had to look for

1 work as part of receiving their unemployment benefits?

2 A That is correct.

3 Q Before someone receives unemployment benefits, you verify
4 their immigration status through the Systematic Alien
5 Verification for Entitlement, or SAVE interface, correct?

6 MR. POLOZOLA: Objection, scope and foundation, Your
7 Honor.

8 MS. SCHEFFEY: Your Honor, these are the people he
9 testified that he helps. That's the basis of his testimony.

10 THE COURT: Wait a minute. I think he may answer.

11 THE WITNESS: Could you repeat the question?

12 BY MS. SCHEFFEY:

13 Q Before someone receives unemployment benefits, you verify
14 their immigration status through the SAVE interface, correct?

15 A That is done outside of my scope of work so I can't answer
16 directly to that.

17 Q Do you know what the SAVE interface does?

18 A I am not familiar with that. Are you saying save,
19 S-A-V-E?

20 Q Systematic Alien Verification for Entitlements.

21 A I am not familiar with that. It is outside my scope of
22 work.

23 Q Are you aware of anyone at the Northwest ICE Processing
24 Center that has received unemployment benefits?

25 MR. POLOZOLA: Same objection, scope, Your Honor.

1 THE COURT: He may answer.

2 THE WITNESS: I don't recall assisting directly
3 anybody from the immigration center.

4 BY MS. SCHEFFEY:

5 Q If COVID was not waiving the job seeking requirement,
6 would someone who was detained at the Northwest ICE
7 Processing Center be able to meet the job search requirement
8 if there is no employment in the place where they are
9 detained?

10 A Somebody who is detained, period, is not eligible for
11 unemployment benefits. Is that what you are asking me?

12 Q I was asking something along those lines. I think that is
13 close. Do you know, sitting here today, what the deficit
14 between job seekers and jobs is in the food service industry?

15 A I do not.

16 MS. SCHEFFEY: No further questions. Thank you.

17 THE COURT: Redirect, counsel?

18 MR. POLOZOLA: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. POLOZOLA:

21 Q Mr. Gard, thank you for coming back this morning. We did
22 speak yesterday about how you have personally helped job
23 seekers in Tacoma and Pierce County who are looking for work;
24 is that correct?

25 A That is correct.

1 Q You said you have helped job seekers that have looked for
2 work as custodians, cooks and dishwashers, laundry workers
3 and barbers; is that correct?

4 A That is correct.

5 Q Now, counsel just asked you some questions about work
6 authorization and background checks, correct?

7 A Uh-huh.

8 Q You serve everyone who is looking for work in Tacoma,
9 right?

10 MS. SCHEFFEY: Objection, leading. Still his
11 witness.

12 THE COURT: The question was leading in form.

13 BY MR. POLOZOLA:

14 Q As a work force supervisor, who does your team serve?

15 A Our team serves anybody in the State of Washington. I
16 like to say that if you have a beating heart, we will help
17 you.

18 Q Have you been successful in helping individuals in Tacoma
19 and Pierce County find work?

20 A We have.

21 Q What impact, if any, would it have on your work and the
22 job seekers you serve if there were more jobs available in
23 the areas such as custodians, cooks and dishwashers and
24 barbers?

25 A It would have a great impact. We welcome any employment

1 opportunity to connect our job seekers to those employment
2 opportunities.

3 MR. POLOZOLA: Thank you. No further questions.

4 MS. SCHEFFEY: One follow up question, Your Honor.

5 RECROSS-EXAMINATION

6 BY MS. SCHEFFEY:

7 Q You just testified that --

8 MS. SCHEFFEY: Following up.

9 THE COURT: I'm sorry. Don't get used to going
10 beyond one cross and one direct from each party. What is
11 your question now, Ms. Scheffey?

12 BY MS. SCHEFFEY:

13 Q Mr. Gard, you just testified that it would have a great
14 impact on your job seekers if there were more jobs, correct?

15 A Yes.

16 Q You don't know what the deficit is right now sitting here
17 today between job seekers and jobs?

18 A I could not tell you how many job seekers there are out
19 there to employment opportunities, no.

20 MS. SCHEFFEY: Thank you. That's it.

21 THE COURT: Well, I will withhold my comments and
22 excuse Mr. Gard. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: Okay. Next witness.

25 MR. POLOZOLA: Your Honor, the State has no further

1 witnesses.

2 THE COURT: All right. Mr. Whitehead.

3 MR. WHITEHEAD: Your Honor, private plaintiffs have
4 no further witnesses. We would offer -- I hope it has been
5 uploaded at this time -- Exhibit 609.

6 MR. POLOZOLA: I believe we are working on that right
7 now, counsel. Your Honor, it will go in shortly.

8 MS. SCHEFFEY: I need a minute.

9 THE COURT: Let me explain that to the jury. Exhibit
10 609 is a list of the agreed facts that the parties have
11 agreed to in this case. That exhibit may be admitted. It is
12 the same list that I read to the entire jury panel during my
13 introduction to the case. 609 may be admitted.

14 I take it now both plaintiffs rest; is that correct?

15 (Exhibit 609 was admitted.)

16 MR. WHITEHEAD: That is correct, Your Honor.

17 MR. POLOZOLA: That is correct, Your Honor. Thank
18 you.

19 MS. SCHEFFEY: Lane, can you send me a copy of what
20 we are admitting?

21 MR. POLOZOLA: It is in the Box right now. Adrienne,
22 if you can access our folder, it is there.

23 THE COURT: Ladies and gentlemen, I am going to give
24 you a break here. I have to hear some matters related to the
25 law in the case. Take a break, and hopefully this won't take

1 long and we will be back with you soon.

2 (The following occurred outside the presence of the jury.)

3 THE COURT: Mr. Silverman.

4 MR. SILVERMAN: Thank you, Your Honor.

5 At this point, the defendant moves for a directed verdict
6 on the jury counts of involuntary dismissal, on the non-jury
7 counts under Federal Rule of Civil Procedure 50.

8 A brief is being -- I presume has been filed in the last
9 minute on that. So Tyler, if you want to print that out as
10 it comes across the wire.

11 The brief is fairly exhaustive. I will just hit each of
12 the elements, and we will go from there.

13 In addition, we have already moved, pursuant to Federal
14 Rule of Civil Procedure 23, to decertify the class. We
15 believe, again, parallel to the Rule 50 requirements, that
16 the requirements of Rule 23 -- typicality, adequacy,
17 commonality and preponderance -- are established to be
18 inadequate as it pertains to the one remaining named
19 plaintiff, Mr. Nwauzor, as to the entire class.

20 Let me go through the Rule 50 arguments. Like I said, we
21 filed it as well. Your Honor, it should be appearing on your
22 screen momentarily. No. 1 -- some of these are preservation
23 arguments. Obviously, it is Rule 50. We need to go through
24 this.

25 No. 1, we had pointed out most specifically in the Fourth

1 Circuit case in *Ndambi* that under federal law the standards
2 for the determination of whether a detainee can be considered
3 an employee, that three-part test, which we believe the
4 evidence clearly shows the evidence cannot be interpreted any
5 way other than finding that the detainees are not employees.

6 Under the modified economic dependence test applicable to
7 detention, which again we have also briefed, the question of
8 whether the detainee is working to turn a profit for GEO,
9 whether the detainee and GEO have an opportunity for a
10 bargain for mutual economic gain, and whether GEO provides
11 the detainee with food, shelter and clothing that employees
12 would otherwise need to purchase in a true employment
13 situation, that the evidence cannot be reasonably interpreted
14 in any other way other than to find that the detainees are
15 not employees.

16 Under that, then that leads to the third version of "are
17 you an employee," which is the modified *Anfison* test that the
18 Court had considered and had put in some of the tentative
19 jury instructions, the nine-part test. You know, we have
20 briefed that at some length. Again, as noted in *Anfison* and
21 others, the nine-part jury test, which is the nature and
22 control of the detainees by GEO. They are in custody. They
23 are constantly under GEO's control. That factor has little
24 or no weight.

25 The degree of supervision, indirect or direct, of work by

1 detainees. They are always supervised, so that element has
2 little to no weight.

3 Whether GEO has the power to determine pay rates and the
4 method of payment. As noted in great detail, the rate is
5 confirmed and set under contract between ICE and GEO.

6 D, whether GEO had the right directly or indirectly to
7 hire, fire or modify the employment conditions. As you have
8 heard, GEO is required to offer the VWP position to every
9 detainee regardless of their prior experience or skill. You
10 never heard of a single detainee who was actually terminated
11 from the program. Spent a lot of time arguing about the
12 difference between termination from their post and firing
13 from their job. You didn't hear a single detainee who was
14 actually removed from the program.

15 E, whether GEO prepared payroll and the payments to
16 detainees under VWP. Again, GEO doesn't perform payroll
17 which involves calculating hours, withholding taxes and other
18 amounts. The money goes into a trust account and then ICE
19 reimburses.

20 Whether GEO provided all necessary equipment and supplies
21 necessary for the VWP. They are in detention. That is the
22 only way it can work. So that matter should have little or
23 no weight.

24 The degree of permanence in the working relationship in
25 the VWP. You heard from their expert. You heard the other

1 testimony, the average stay is about two months. Some can
2 come and go within days. Detainees can and do decide not to
3 show up, but nonetheless stay in the program. You heard from
4 detainees who, in fact, provided decline to work forms and
5 stayed in the program.

6 H, whether the service rendered by detainees through VWP
7 is an integral part of GEO's business. GEO is in the
8 business of providing secure detention. Detainees do not do
9 that.

10 I, detainees' dependence upon GEO for income. This factor
11 doesn't make sense in the detention context, which is why the
12 Fourth Circuit ruled the way it did.

13 Under each of those elements, we believe that there is no
14 reasonable possibility that a jury can find in any way that
15 they are not employees.

16 I am going to raise a couple of the issues that the Court
17 has previously declined to include in the instructions
18 because we need to preserve them.

19 Detainees are not employees under the resident exception
20 to the Washington Minimum Wage Act, and that detainees are
21 not employees under the detainee exception to the Washington
22 Minimum Wage Act. Again, you have seen briefing on that. We
23 have reasserted those issues as well.

24 Finally, we get to the immunity defenses. GEO must be
25 treated the same as the federal government for the purposes

1 of intergovernmental immunity. We briefed that. GEO is
2 therefor entitled to intergovernmental immunity because the
3 Washington Minimum Wage Act attempts to directly regulate the
4 federal government. You have seen that briefing and we have
5 put that forth in great detail.

6 GEO is entitled to the intergovernmental immunity because
7 the Washington Minimum Wage Act discriminates against the
8 federal government as set forth in that statute. The statute
9 specifically exempts the State from the same kinds of
10 services including corrections, detainee and whatever you
11 want to call someone who is incarcerated. It doesn't apply
12 to the State. It does apply to the federal government. It
13 does apply to GEO.

14 Washington is entitled to -- GEO is entitled to derivative
15 sovereign immunity. We briefed that. We just need to
16 preserve that. Your Honor has not included that within the
17 jury instructions. We have argued in the past, and therefore
18 raise now that the Washington Minimum Wage Act is preempted
19 by federal law under both express preemption and field
20 preemption. You have seen that briefing. That is coming
21 back. Again, that is contained in the brief that was
22 provided to Your Honor.

23 There is a third concept known as conflict/obstacle
24 preemption. We have raised that as well, and therefore want
25 to preserve that as well.

1 So those are the arguments contained within the Rule 50
2 motion. Again, it is not clear under Rule 23 whether the
3 motion as to decertify based on the evidence that is
4 presented is a halftime motion in a trial because the
5 prevailing cases seem to appear that the Court has the
6 discretion to decertify at any moment prior to the entry of a
7 final judgment.

8 But at this point, again, this is the point where you can
9 see that what we have is solely Mr. Nwauzor. He is the only
10 named plaintiff on the private plaintiffs' claims. He only
11 worked in the pod, and he talked about that. So we spent the
12 rest of that evidence regarding the need for the plaintiffs
13 to put on additional witnesses to talk about what it's like
14 in the laundry, what it's like in the kitchen, talking about
15 the differences in the shift, how long they go, what the
16 basis is. There is no named plaintiff for those.

17 Mr. Urbina, who was then removed as a named plaintiff, was
18 a food porter, a totally different experience as well.

19 For all of those reasons, as set forth more fully in our
20 Rule 50 motion, the defendants move the Court to, A, enter a
21 directed verdict on the jury claims. B, to the extent that
22 there are equitable claims that the Court has deemed
23 non-jury, which we will decide later on, that an involuntary
24 dismissal be entered as to those counts, and that the Court
25 otherwise decertify the classes under Rule 23.

1 THE COURT: You have handed me a 27-page brief. I
2 take these motions seriously. I obviously can't accurately
3 rule on it or fairly rule on it without reading what you have
4 presented.

5 You know, this whole case is, I would call it
6 counterintuitive. That doesn't make it wrong. I think at
7 this point the plaintiffs have raised issues on -- fact
8 issues on all the necessary issues in the case to carry it
9 forward. Before I rule finally on your motion, I will read
10 what you presented.

11 In regard to decertifying the class, the motion was made
12 and noted for the 18th. I have not seen the plaintiffs'
13 response to it. I think it would be premature to rule on
14 that issue at this point as well. The motion is reserved.
15 We will proceed with the defense case.

16 MR. WHITEHEAD: Your Honor, I would only point out
17 the motion for decertification has been re-noted for the
18 25th.

19 THE COURT: I didn't know that. Rachel did. She is
20 signalling me that that's the case. As soon as I feel
21 comfortable after reading everything, I will tell you
22 further, but I don't want to keep the jury waiting while that
23 gets done.

24 MS. CHIEN: Your Honor, unfortunately we would like
25 to still have our conference regarding the L&I witnesses

1 because I believe GEO's first witness is an L&I witness. I
2 would like to renew our objections to this witness given that
3 the Court has already rejected GEO's defenses of laches and
4 statute of limitations and unclean hands, and has excluded
5 all of the exhibits which Tammy Fellin appears on. Calling
6 her as a witness is really a back door to getting evidence
7 that was excluded and defenses that were dismissed before the
8 jury. It is irrelevant, prejudicial and a waste of time.

9 MS. MELL: Your Honor, may I address that when you
10 have the opportunity?

11 THE COURT: Go ahead. I don't know where this is
12 going. Go ahead, Ms. Mell.

13 MS. MELL: Your Honor, you mentioned that this case
14 is somewhat counterintuitive. That is exactly why we are
15 calling the State's witnesses, especially as it relates to
16 the manner in which the State has addressed detention. There
17 is a very specific instruction that you are authorizing GEO
18 to defend on in this case. That is --

19 THE COURT: Wait a minute. Wait a minute. Those
20 instructions were a discussion draft. They don't mean a
21 thing.

22 MS. MELL: Okay.

23 THE COURT: You all were anxious to know what the
24 instructions might look like, so I prepared a discussion
25 draft for you. That's all it is.

1 Excuse me, counsel.

2 MS. MELL: All right. Not to attribute to you
3 something you haven't made a final decision on. My
4 apologies, Your Honor. It is what we have been working from,
5 but it's also consistent with GEO's position and defense that
6 we are here to show that GEO operates a governmental program
7 for detainees. Detention is not employment. It is a
8 distinct concept. It's a mutually exclusive concept from
9 employment.

10 The evidence that we intend to put on through the State's
11 witnesses is that even the State knows and addresses
12 detention distinctly from employment.

13 Tammy Fellin, the next witness who will be called to
14 testify, will testify that she's a policy official who has
15 grappled with the issues of employment versus detention and
16 has expressed the policy reasons why there is a distinction
17 between detention and employment.

18 In opening and in examination of Mr. Scott, the plaintiffs
19 have expressly opened the door to the documents the Court
20 said were not per se admissible. But when I asked, "Does
21 that mean I cannot get this whole history of the way the
22 State has handled detention and how they have addressed
23 whether or not the Minimum Wage Act is applicable to GEO or
24 the detainees at the detention center," the Court expressly
25 told me, "I am not saying that you can't get it in through

1 witness testimony."

2 Ms. Fellin will be one of those witnesses who, in response
3 to the question put to Mr. Scott, "Is there a document that
4 says the Minimum Wage Act does not apply to the GEO
5 detainees," we'll be able to say, "Yes, there is," because I
6 authored it and I published it to the Governor's office when
7 there was an express inquiry by the very advocates who have
8 put -- the plaintiffs have put a witness on from the
9 Northwest Immigration Rights Project who has testified as
10 their expert, whose organization lobbied the Governor's
11 office in 2014 to enforce the Minimum Wage Act against GEO.

12 There was a whole flurry of email discussion and briefing
13 and thought put into why would or wouldn't the State treat
14 detainees in federal custody under the Minimum Wage Act as
15 employees, and a policy determination was made expressly and
16 expressly published to those advocates that it didn't apply.

17 MS. CHIEN: Your Honor, that is a misstatement.
18 There is no publication. There was an internal email within
19 L&I and the Governor's office. There's nothing that went to
20 GEO indicating there was a Minimum Wage Act determination by
21 L&I.

22 L&I's discussion from 2014 -- internal discussions
23 regarding 2014 were already excluded. What L&I thought in
24 2014 does not matter. That defense does not exist in this
25 case. The Court dismissed laches, statute of limitations,

1 prosecutorial discretion, and excluded the emails that
2 Ms. Mell would like to come in through these witnesses.

3 MS. MELL: Your Honor, I was interrupted. I can read
4 expressly from the emails. The email -- whether the email
5 comes in or not, Ms. Fellin can say whether or not the
6 Department treats detention, people in state custody or
7 federal custody, as employees. She will say that. She does
8 have an express provision that she says, "At least this way
9 we will all know the Department's authority moving forward as
10 to, do INS detainees fall under L&I's jurisdiction for wage
11 and hour issues?" That wasn't an internal email. The State
12 actually was asked and invited to come down and take a
13 position on it for the advocates who were out in front of the
14 detention center lobbying on whether or not the Governor
15 would back them on minimum wage issues, and the Governor
16 declined to do so in 2014. That's a whole policy position of
17 the State on the difference between detention and employment.

18 It goes directly to our defenses of how does the State
19 treat its detainees, does it discriminate when asked here to
20 apply a different standard to GEO and its detainees.

21 The opening of the door cannot be underemphasized here.
22 On page 65 -- I am looking at the verbatim report of
23 proceedings from Mr. Whitehead to the facility
24 administrator -- "Is it your testimony that there is a
25 document somewhere that says GEO has complied or does not

1 need to comply with state minimum wage laws for the voluntary
2 work program? Is that your testimony?

3 "Mr. Scott, I don't know anything about that, sir.

4 "Question: Because if there was that sort of document, I
5 mean, that's a document we would have seen by now at trial,
6 would you agree?"

7 He put that right in front of the jury. I have a right,
8 on behalf of GEO, to stand and up say, "Ms. Fellin, you know
9 of such a document. You authored it. It's right here."

10 MS. CHIEN: The existence of a document that was not
11 shared with GEO or the advocates that Ms. Mell is talking
12 about is not relevant.

13 THE COURT: Just a minute.

14 You know, Ms. Mell, what you are asking for is a jury
15 instruction that says the State has the right to change its
16 mind, and the question is now -- the question we are trying
17 in this case, it's not what the State's position might have
18 been at some other time. I think you are --

19 MS. MELL: Your Honor --

20 THE COURT: -- barking up the wrong tree. It is not
21 a defense. Wait a minute. Wait a minute. I'm talking.

22 MS. MELL: I'm sorry, Your Honor. My apologies.

23 THE COURT: The exhibits that I saw on this subject,
24 if I recall all of them, never amounted to a State policy
25 decision on this subject. That is why I was very reluctant,

1 but didn't rule specifically pretrial on their admissibility.

2 I don't want to tell you how to try your case. I think
3 you are barking up the wrong tree if you think the State
4 can't change its mind. Particularly, if no policy was ever
5 reached. I think we are on the verge of wasting a lot of
6 time.

7 On the other hand, this is basically a late motion in
8 limine. I can rule better on things as they come up because
9 it may be that this witness has some admissible testimony
10 about some things relative to how the State treats its own
11 detainees --

12 MS. CHIEN: Your Honor --

13 THE COURT: -- which is probably the only thing that
14 she might have that is relevant to the issue in this case.

15 MS. MELL: Thank you for that clarification,
16 Your Honor. I can work with that.

17 MS. CHIEN: We think it is prejudicial to have any of
18 the L&I witnesses discuss their thoughts on something --

19 THE COURT: Okay. Make an objection if they ask for
20 that and we will rule on it.

21 MS. CHIEN: Okay.

22 THE COURT: I can't anticipate every question or
23 possible answer.

24 MS. CHIEN: Okay. Thank you, Your Honor.

25 I am going to have to call Ms. Fellin, Ms. Mell, so you

1 might have to give me a minute.

2 MS. MELL: We have an issue with regard to the
3 State's instructions on how to give the documents to the
4 witness. It was my understanding we were supposed to be able
5 to email. I have just been handed a note that somehow they
6 are thinking we need paper documents in Seattle. What's the
7 situation?

8 MR. POLOZOLA: I believe a member of your team asked
9 if documents could be sent by mail to Seattle. So perhaps
10 Mr. Silverman or Ms. Scheffey --

11 MS. SCHEFFEY: Lane, we got a spreadsheet from Marsha
12 that said, you know, these witnesses want paper, these want
13 electronic. I believe it was Eisen and Sytsma who want
14 paper, and everyone else was electronic. I gave Fellin
15 electronic, so...

16 MR. POLOZOLA: What is the issue?

17 MS. SCHEFFEY: I don't know that there is one, if
18 she's okay with electronic documents.

19 MS. MELL: Did the State give us her email then?
20 What is the email that she is supposed --

21 MR. POLOZOLA: I believe she has the Box link.

22 MS. MELL: Okay. She has Box? Okay. We can work
23 with that, then. Sorry. We will call Ms. Fellin.

24 MS. CHIEN: Was there a question to me while I was
25 gone?

1 THE COURT: No, I don't think so.

2 Let's bring the jury in and go to work. Is the witness
3 present?

4 THE CLERK: The jurors are here, but we are waiting
5 on the witness.

6 (The following occurred in the presence of the jury.)

7 THE COURT: Ms. Fellin, if you would unmute your
8 microphone. If you will raise your right hand and be sworn.

9 TAMMY FELLIN,
10 having been sworn under oath, testified as follows:

11 THE COURT: You may inquire.

12 DIRECT EXAMINATION

13 BY MS. MELL:

14 Q Good morning, Ms. Fellin.

15 A Good morning.

16 Q Can you tell me your position? You work for the State of
17 Washington, correct?

18 A I do. I am the legislative director for the Department of
19 Labor & Industries, so the Department's lobbyist.

20 Q You are an employee, correct?

21 A I am, yes.

22 Q As a legislative director, it is your job to interface
23 with legislative officials, elected officials on L&I's
24 position on enforcing public policies, correct?

25 A Yes, it is my role to represent the Department with

1 elected officials in general.

2 Q Another population in the State of Washington who you work
3 with, with some regularity and it is your duty to work with,
4 are stakeholders, people that have an interest in what the
5 Department of Labor & Industries does and how it enforces
6 State policy, correct?

7 A Yes. I do also work with external stakeholders who
8 represent the Department with them.

9 Q And you work with the Governor's office, correct?

10 A Yes, I do.

11 Q Your position is appointed?

12 A Yes, I am appointed by the Director, yes.

13 Q The Director is appointed by the Governor?

14 A Yes.

15 Q The Governor is the elected executive officer of the State
16 of Washington, correct?

17 A Yes.

18 Q You would agree that your position is pretty political,
19 right?

20 MS. CHIEN: Objection, leading.

21 THE COURT: Overruled.

22 BY MS. MELL:

23 Q You may answer, Ms. Fellin. Did you understand the
24 question?

25 A I understood you to be asking if my position was

1 political, yes.

2 Q When I say that, I mean if you step in it and take a wrong
3 political position, your job could be at risk, right?

4 A I am an appointed position so, yes, there is all sorts of
5 reasons why my job could be at risk. Sure.

6 Q And what you find when you are in that position is that
7 there is a whole bunch of opinions on a whole bunch of issues
8 that you may not always see what the position is before there
9 is a public discussion about it, correct?

10 MS. CHIEN: Objection, relevance.

11 THE COURT: She may answer.

12 THE WITNESS: I am not entirely sure I understand the
13 question, though. If you could restate.

14 BY MS. MELL:

15 Q Well, as a lobbyist for the Department of Labor &
16 Industries, has it been your experience that little things
17 that you didn't think were controversial, all of a sudden
18 become quite controversial?

19 A Yes. It is not always possible to predict how people will
20 react for sure.

21 Q It is your job in that position to make your Director
22 looks good, correct?

23 A Sure, and to represent the Department, yes.

24 Q In a way that is consistent with the policy objectives set
25 by the legislature that the Governor and executive branch

1 then enforces, correct?

2 A Sure. Yes.

3 Q Okay. And so in your position, you have had the
4 experience of dealing with a variety of issues that are
5 unique to the Labor & Industries, correct?

6 A Yes, that would be correct.

7 Q So you know I worked on the Hill and am familiar with
8 policy issues, right?

9 A I didn't know you had worked on the Hill, no.

10 Q When we talk about "the Hill" and "lobbying," what does
11 that mean?

12 A In this context, means most of my time is spent with the
13 legislature during session. I am often on the capitol campus
14 where the legislature normally convenes. That wasn't the
15 case this year. That is what I mean by "the Hill," yes.

16 Q And so one of the things you do for the Department of
17 Labor & Industries is you are the communication person on
18 request legislation, so if the Department wants to move a
19 particular piece of legislation or get the policy of the
20 State of Washington changed, you are the spokesperson for
21 that, correct?

22 A Yes.

23 Q The Governor's office communicates back with you, and you
24 use the resources of your agency to figure out what the right
25 position is on a particular issue affecting L&I, correct?

1 MS. CHIEN: Objection, leading and relevance.

2 THE COURT: The objection is overruled.

3 THE WITNESS: In my role, yes, I am the spokesperson
4 for the Department on issues that the legislature is
5 considering.

6 BY MS. MELL:

7 Q Part of that spokesperson role relates, in part, to
8 carrying out the policy objectives set by the Governor's
9 office and the agency via request legislation, correct?

10 A That is one way, yes. The Department is -- does usually
11 have an agency request legislation that we move forward. We
12 do work closely with the Governor's office to make sure we
13 are consistent in the -- in the types of the requests we
14 bring forward, yes.

15 Q Okay. So with regard to the kinds of requests that you
16 bring forward, the kinds of requests that you bring forward
17 you want to make sure are consistent with the objectives of
18 the Department of Labor & Industries, correct?

19 A When you say "requests," do you mean agency requests,
20 bills that we seek to bring forward?

21 Q Actually, that brings up a good point. There is a whole
22 bunch of ways that you in your position make sure that what
23 the legislature does or what the Governor's office does is
24 consistent with the objectives of Labor & Industry, correct?

25 A I am struggling because we don't -- we don't control what

1 the legislature or the Governor's office brings forward.
2 That's my hesitation. I am not -- I represent the
3 Department. There is a lot of issues that come forward that
4 are not things the Department chooses to pursue or initiate.
5 Q Right, but if they do have an issue they want to pursue,
6 request legislation is the way they do it?

7 A Request legislation is the way the Department would do it,
8 yes.

9 Q With regard to the Department of Labor & Industries, for
10 those on the jury who are not a policy wonk like you and me
11 or working the Hill by experience --

12 THE COURT: Just a minute. Ms. Mell, your background
13 is not relevant to your questioning of this witness or any
14 witness. Leave your own experience out of it and just ask
15 the questions.

16 MS. MELL: Okay. All right.

17 BY MS. MELL:

18 Q So the Department of Labor & Industries, just so we
19 understand what that means, is an agency that is basically a
20 labor agency. Its focus is employment, correct?

21 A No. Our focus is workplace safety and rights, so we
22 administer the elevator programs, we do elevator inspections,
23 we do the workers' comp program, we do safety and health. We
24 obviously do the wage and hour, so like minimum wage,
25 questions around overtime. Plumbing. If a person wants to

1 hire a plumber, we license plumbers. We do a whole variety
2 of things. It is workplace safety. Our mission is to keep
3 Washington safe and working.

4 Q Is it correct that L&I is a diverse agency dedicated to
5 the safety, health and security of Washington's 3.3 million
6 workers?

7 A Yeah.

8 Q Is it correct you understand that that 3.3 million workers
9 does not include those individuals who are in the detention
10 of the State or custody of the State, correct?

11 MS. CHIEN: Objection. Objection.

12 THE COURT: She may answer.

13 THE WITNESS: I think it would depend on the program
14 that would be included.

15 BY MS. MELL:

16 Q When you say "program," are you talking about the multiple
17 divisions the Department has?

18 A I am thinking more in terms of the specific program.
19 Would it be a Paid Family Medical Leave issue, would it be a
20 workers' comp issue, would it be a plumber issue? I mean,
21 there is a whole variety of different programs and different
22 applications.

23 Q As a general rule, though, the Department of Labor &
24 Industries does not treat the individuals who are in the
25 custody of the State as employees?

1 MS. CHIEN: Objection, foundation.

2 BY MS. MELL:

3 Q Or covered worker, right?

4 THE COURT: That's now two questions. The second one
5 came after the objection. The objection is sustained. Ask a
6 single question.

7 BY MS. MELL:

8 Q So as a general rule, the Department of Labor & Industries
9 doesn't count in its 3.3 million workers those individuals
10 who are in State custody, for instance, in the Department of
11 Corrections and held involuntarily?

12 MS. CHIEN: Objection, foundation.

13 THE COURT: She may answer, if she can.

14 THE WITNESS: I think that is a question I would
15 confer with the policy experts of the Department.

16 BY MS. MELL:

17 Q Do you -- with regard to the State's -- let's make it
18 specific to programs. One of the divisions in the Department
19 of Labor & Industries is specific to employment standards,
20 correct, wage and hour issues?

21 A One of our programs is, yes.

22 Q Okay. It is not a division, it is a program?

23 A Right. Not a division. The division that it is part of
24 is the fraud and labor standards division, fraud protection
25 and labor standards.

1 Q Labor standards is a broad umbrella part of Department of
2 Labor & Industries that deals with employment, correct?

3 A Yes, generally, yes.

4 Q One of those programs within that division is ensuring
5 that the 3.3 million workers in Washington get minimum wages?

6 A Right. Yes, one of those programs within the fraud
7 division has within its purview wage and hour issues,
8 including minimum wage.

9 Q Specific to its enforcement of the Minimum Wage Act, the
10 3.3 million workers that it does not protect are those people
11 in the custody of the State of Washington, correct?

12 MS. CHIEN: Objection, foundation.

13 THE COURT: She may answer, if she knows.

14 THE WITNESS: It is a question I would confer with
15 the program staff in order to answer. I think there would be
16 all sorts of variations to respond to that kind of a
17 question.

18 BY MS. MELL:

19 Q You did consult with agency staff back in 2014 on that
20 issue --

21 MS. CHIEN: Objection.

22 BY MS. MELL:

23 Q -- for detention, didn't you?

24 MS. CHIEN: Objection, relevance.

25 THE COURT: The objection is sustained.

1 BY MS. MELL:

2 Q Have you had any experience working at the Department of
3 Labor & Industries where you have learned that the people who
4 are in the custody of the State of Washington are expressly
5 exempt from the Minimum Wage Act?

6 MS. CHIEN: Objection, foundation.

7 THE COURT: Restate the question. You are asking for
8 her experience on an isolated thing. The objection to that
9 is sustained.

10 BY MS. MELL:

11 Q Has it been your experience with the Department of Labor &
12 Industries that there is an exemption for people in State
13 custody with regard to the Minimum Wage Act?

14 MS. CHIEN: Objection, foundation.

15 THE COURT: She may answer.

16 THE WITNESS: Can you repeat the question?

17 BY MS. MELL:

18 Q The Minimum Wage Act does not apply to the State's
19 individuals in custody, correct?

20 MS. CHIEN: Objection, foundation.

21 THE COURT: She may answer, if she knows.

22 THE WITNESS: My experience is that question might
23 vary, and I would check with the program staff.

24 BY MS. MELL:

25 Q Have you checked with the program staff on a question like

1 that presented to you in the past?

2 A Yes.

3 Q And was that question presented to you in a question posed
4 by the Governor's office?

5 MS. CHIEN: Objection, relevance.

6 THE COURT: Sustained.

7 BY MS. MELL:

8 Q When that question was posed to you in the past, did you
9 come up with an answer to the question?

10 MS. CHIEN: Objection, relevance.

11 THE COURT: Sustained.

12 BY MS. MELL:

13 Q In your experience, has the Department of Labor &
14 Industries taken on and handled complaints by individual
15 detainees for the State of Washington?

16 MS. CHIEN: Objection, foundation.

17 THE COURT: No, she may answer that.

18 THE WITNESS: I would -- I am not sure. I don't
19 always see all of the complaints that might come into the
20 Department. I am unsure. I don't know whether we would have
21 had something like that or not.

22 BY MS. MELL:

23 Q Has the Department taken a position on whether or not
24 there are policy reasons, either fiscal or to achieve policy
25 objectives of the State, that the individuals who the State

1 detains, puts in State custody, should not get minimum wages?

2 A I don't know. I would have to again consult the program
3 staff whether we have taken a policy position like that.

4 Q Have you ever looked at the Minimum Wage Act?

5 A Yes.

6 Q Have you had the experience of dealing with the definition
7 of "employee" and, in particular, the express exemption for
8 individuals within the custody of the State of Washington?

9 MS. CHIEN: Objection, foundation.

10 THE COURT: The question is whether she has looked at
11 it. She may answer that.

12 THE WITNESS: Yes, I personally have looked at it. I
13 personally would not be the person to make those kinds of
14 determinations, though.

15 BY MS. MELL:

16 Q You know, as we sit here today, that people who the State
17 of Washington have in its custody are not employees under the
18 Minimum Wage Act?

19 A I know what the program staff would tell me. My
20 experience would suggest that those kinds -- that there are
21 nuances, there are variations, so as the Department's
22 lobbyist, I wouldn't make that kind of determination. I
23 would rely on program staff to make those -- provide that
24 kind of input.

25 Q Have you ever had input from program staff that indicates

1 that people in the State's custody are employees under the
2 Minimum Wage Act?

3 A I don't know. Have I ever had input from program staff
4 that inmates are covered? That was your question?

5 Q No, it wasn't. It is kind of along those lines.
6 Individuals who are in the custody of the State, inmate or a
7 special commitment center person, somebody who is civilly or
8 criminally committed, have you ever had a situation where
9 your staff has told you that the law that defines them not to
10 be employees doesn't apply?

11 MS. CHIEN: Objection, calls for a legal conclusion.

12 MR. BERGER: Also calls for hearsay.

13 THE COURT: Sustained. Yes. Sustained.

14 BY MS. MELL:

15 Q So let me get back to this and make sure I understand your
16 testimony. You know for certain that there is, in the
17 definition of "employee" in the Minimum Wage Act, an
18 exclusion for individuals who are in State custody, correct?

19 MR. BERGER: Objection, Your Honor, the attorney --
20 Ms. Mell is instructing the jury on the law or is asking a
21 question. I am not sure it accurately states the law, in any
22 event.

23 THE COURT: The objection is sustained on the last
24 ground.

25 MS. MELL: I guess we can get the exception up so we

1 can look at it expressly. Let me see if I can get that for
2 you.

3 BY MS. MELL:

4 Q You have looked at the definition of "employee" under the
5 Minimum Wage Act, correct?

6 A Yes.

7 Q In looking at that definition, you know that there is an
8 exclusion or exception that applies to individuals in State
9 custody?

10 MS. CHIEN: Objection, same issue.

11 MR. BERGER: Join.

12 THE COURT: Sustained.

13 MS. MELL: We will see if we can get that pulled up
14 to get some clarity to what it actually says.

15 BY MS. MELL:

16 Q Has the Director -- while we are waiting, I'm going to
17 move on here. Is it the Director's position it must
18 investigate all wage complaints?

19 MS. CHIEN: Objection, foundation. She's not the
20 director.

21 THE COURT: If she knows, she may answer.

22 THE WITNESS: I don't know if the Director has taken
23 that position.

24 BY MS. MELL:

25 Q Has L&I taken the position that if it receives a Minimum

1 Wage Act complaint, it will investigate it?

2 A My understanding from program staff is that the statute
3 tells us to investigate wage complaints.

4 Q Have you had -- do you know that in an investigation of a
5 wage complaint, the State considers different objectives for
6 why somebody would or would not pay minimum wage, correct?

7 MR. BERGER: Objection, compound.

8 THE COURT: The objection is sustained. We are going
9 to take an early break today because of an issue in another
10 building that could affect us. We are going to be at recess
11 for at least ten minutes. You may be excused.

12 (Recessed.)

13 THE COURT: Is everybody back? You can bring the
14 jury in and the witness.

15 (The following occurred in the presence of the jury.)

16 THE CLERK: We have all the jurors back.

17 THE COURT: Ladies and gentlemen, it is kind of slow
18 going this morning. We run into these delays sometimes.
19 This time, it was a little unusual because it was a fire
20 alarm in another building where some of the lawyers are and
21 that required a longer recess than usual. Anyway, we are
22 back ready to go after that long recess.

23 Ms. Mell, you may ask your next question.

24 BY MS. MELL:

25 Q Ms. Fellin, can you hear me? I need her up there.

1 A Yes, I can.

2 Q I needed to see you, too. All right.

3 It is your understanding that the Department of Labor &
4 Industries has never historically investigated and processed
5 a complaint by a person in state custody that they have not
6 received and should have been entitled to minimum wages under
7 the Minimum Wage Act, correct?

8 MS. CHIEN: Objection.

9 THE COURT: She may answer if she knows.

10 THE WITNESS: I don't know the answer to that
11 question.

12 BY MS. MELL:

13 Q Do you -- why don't you know the answer to that question?
14 Is it because you don't see the complaints that come in?

15 A I don't see all the complaints that come in. I also --
16 you know, we are a large agency. There is just no -- a
17 single person is not capable of doing all of that, keeping
18 track of all of that, so I don't know.

19 Q When you went into this case -- strike that.

20 When you received my subpoena to testify, it is not an
21 issue that you looked into?

22 A I didn't receive the subpoena. I think it went to the
23 attorneys. I think -- I would need to know what issue you
24 are wanting me to look into, I guess.

25 Q Did you have no idea why you were being called to testify

1 to the jury today?

2 MR. BERGER: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MS. MELL:

5 Q Did you have an understanding that you would be asked
6 questions about the Department of Labor & Industries'
7 application of the Minimum Wage Act to people in state
8 custody when you were called to testify today?

9 MS. CHIEN: Objection, relevance.

10 THE COURT: The objection is sustained.

11 BY MS. MELL:

12 Q In your position, is it knowable to you whether or not the
13 State has enforced or been asked to enforce the Minimum Wage
14 Act by any individual who is in state custody?

15 A Yes, it is knowable, if I consult with the program staff.

16 Q Historically, you have never had to consult with the
17 program staff about that question, correct?

18 A I have consulted with program staff, sure.

19 Q Specific to whether or not an individual who is in state
20 custody can obtain minimum wages for work done while in state
21 custody?

22 A Yes, specifically to that question.

23 Q And the response you got to that question is consistent
24 with the Minimum Wage Act that expressly excludes from the
25 coverage of the Minimum Wage Act people in state custody,

1 correct?

2 MS. CHIEN: Objection, hearsay.

3 MR. BERGER: Objection.

4 THE COURT: Sustained.

5 BY MS. MELL:

6 Q The knowledge you have about whether or not the complaints
7 would be covered under the Minimum Wage Act is that it was
8 not, correct?

9 MS. CHIEN: Objection.

10 THE COURT: Sustained.

11 BY MS. MELL:

12 Q What did you learn about the application of the Minimum
13 Wage Act to individuals in state custody?

14 MR. BERGER: Objection.

15 THE COURT: Sustained. You are asking for hearsay,
16 counsel.

17 MS. MELL: It is the Department of Labor &
18 Industries, which is a division of the State who is a party
19 opponent. The position of the State agency is not hearsay.

20 BY MS. MELL:

21 Q Before the break, you had indicated that you do know that
22 there's an exemption under the Minimum Wage Act for people in
23 state custody?

24 A I have read the statute, yes.

25 Q So I am going to show you what has been marked as A-307.

1 MS. CHIEN: Is this in the Box, counsel?

2 MS. MELL: Yes.

3 THE WITNESS: Let me see if I can access it. Exhibit
4 A-307 is the one you referenced?

5 BY MS. MELL:

6 Q It should look like the statute.

7 A Okay.

8 Q Is this the statute that you have looked at before on the
9 issue of who is exempt and who is not considered an employee
10 under the Minimum Wage Act?

11 A Yes.

12 Q It is the definition section of the Minimum Wage Act,
13 correct?

14 A It looks to be, yes.

15 MS. MELL: Your Honor, if this is the statute she was
16 looking at, may we publish for illustrative purposes, the
17 definition?

18 MS. CHIEN: We would object. Any instruction as to
19 the law should be from the Court.

20 MR. BERGER: Join, Your Honor.

21 THE COURT: The objection is sustained. This goes
22 far beyond the question you are seeking to answer. You can
23 refer to a specific section if it is something she read, and
24 ask her about it.

25 MS. MELL: All right.

1 BY MS. MELL:

2 Q Subsection 3 is the definition of "employee," correct?

3 A Yes.

4 Q And an employee under Washington law includes any
5 individual employed by an employer but shall not include,
6 then it lists a series of people who aren't covered by the
7 Minimum Wage Act, correct?

8 A Sure.

9 Q All right. If you go down to subsection (k), subsection
10 (k) says that any resident, inmate, or patient of a state,
11 county, or municipal correctional detention, treatment or
12 rehabilitative institution is not an employee, correct?

13 A Yes, that is what is in the statute, yes.

14 Q And the Minimum Wage Act is a statute that Labor &
15 Industries enforces?

16 A Yes.

17 Q Labor & Industries has never previously sought to change
18 the definition of "employee" to cover people in state
19 custody, correct?

20 MS. CHIEN: Objection, foundation, and misstates the
21 law.

22 THE COURT: The objection is sustained.

23 BY MS. MELL:

24 Q It is the position of the Department of Labor & Industries
25 that you have to follow that law, correct?

1 A Yes, we have to follow the law, as the state regulator.

2 Q You would agree that the legislature controls setting the
3 policy, and this is one of the policies that the legislature
4 has set, correct?

5 A Yes, the legislature puts their policy into the statute,
6 yes.

7 Q Then it is your job, with the Department of Labor &
8 Industries, to enforce the policies specified by the
9 legislature, correct?

10 MS. CHIEN: Objection.

11 THE COURT: I don't know what you mean by "policies
12 specified by the legislature." Are you talking about laws
13 passed by the legislature or some other administrative issue?

14 MS. MELL: Well, I am talking about the laws and the
15 policy implications of the laws. There is a difference
16 between policy and enforcing policy. Policy making versus --

17 THE COURT: Ask the question for the witness.

18 BY MS. MELL:

19 Q It is the job of the Department of Labor & Industries to
20 enforce the laws of the State of Washington as the
21 legislature sets forth the laws of the State of Washington,
22 correct?

23 A Yes.

24 Q And their policy reasons, they may be fiscal, they may be
25 substantive policy concerns that are the reason for the law,

1 correct?

2 MR. BERGER: Objection, foundation.

3 THE COURT: I think she may answer this general
4 question. Do you understand the question?

5 THE WITNESS: I am not entirely sure, Your Honor,
6 what the question was.

7 BY MS. MELL:

8 Q There are fiscal reasons and policy reasons why people in
9 the custody of the State are not employees under the Minimum
10 Wage Act, correct?

11 MR. BERGER: Objection, foundation.

12 MS. CHIEN: Objection.

13 THE COURT: The objection is sustained.

14 BY MS. MELL:

15 Q In --

16 MS. MELL: Is that on foundation grounds, Your Honor,
17 or relevance?

18 THE COURT: You are asking the witness a question
19 that it doesn't make sense for her to be able to answer that
20 question.

21 MS. MELL: All right.

22 BY MS. MELL:

23 Q In your position in the policy shop of the Department,
24 Ms. Fellin, is it your job to explain to stakeholders and
25 constituents why the Department of Labor & Industries would

1 choose to enforce the law as written, policy and fiscal
2 reasons that you discuss with them?

3 A Yes, generally. When a legislator has a question about
4 how an individual case has been adjudicated or something like
5 that, they can ask me. I will consult with our program
6 staff.

7 Q Do you know that there are reasons why the State of
8 Washington exempts people in its custody from the Minimum
9 Wage Act?

10 MS. CHIEN: Objection, foundation.

11 THE COURT: Sustained.

12 BY MS. MELL:

13 Q Do you know the reasons why the State exempts people in
14 its custody from the Minimum Wage Act?

15 A No, I don't know.

16 Q In your position with the Department of Labor &
17 Industries, you have not had to explain that to anyone?

18 A No, not that I recall. It is a question I would likely
19 refer to the legislature. I am mindful that we -- that they
20 create the law. They can explain their intent better than I
21 can.

22 Q It is the Department of Labor & Industries' job to enforce
23 the law, correct, that law in particular?

24 A Yes, that is the role of the Department.

25 Q And the Department of Labor & Industries, to the best of

1 your knowledge, has never enforced the Minimum Wage Act
2 against an individual in state custody?

3 MS. CHIEN: Objection, foundation. Asked and
4 answered.

5 THE COURT: Sustained.

6 BY MS. MELL:

7 Q Do you have knowledge specific to complaints made by
8 detainees at the Northwest ICE Processing Center specific to
9 the Minimum Wage Act?

10 A I can't say if it is specific to detainees at the Center.

11 Q You have dealt with the issue of whether or not detainees
12 at the Northwest ICE Processing Center are covered by the
13 Minimum Wage Act, correct?

14 MS. CHIEN: Objection, relevance.

15 MR. BERGER: Objection, Your Honor. I believe this
16 deals with something the Court has ruled on previously.

17 THE COURT: The objection is sustained.

18 BY MS. MELL:

19 Q Ms. Fellin, the facility administrator at the Northwest
20 ICE Processing Center was asked whether or not there is a
21 document of any kind indicating that the Minimum Wage Act
22 does not apply to detainees at the Northwest ICE Processing
23 Center. You authored such a document, didn't you?

24 MR. BERGER: Objection.

25 MS. CHIEN: Objection, relevance.

1 MR. BERGER: Ask the question be stricken.

2 THE COURT: The objection is sustained.

3 BY MS. MELL:

4 Q Has the Department of Labor & Industries taken a position
5 on the application of the Minimum Wage Act to detainees at
6 the Northwest ICE Processing Center and changed its position?

7 MS. CHIEN: Objection.

8 THE COURT: The objection is sustained.

9 MS. MELL: Your Honor, I would like to examine the
10 witness on a document that is in the Box. It is labeled 305,
11 A-305.

12 MS. CHIEN: Your Honor, we object to any testimony
13 related to A-305.

14 THE COURT: A-305?

15 MS. MELL: Yes, Your Honor.

16 MS. CHIEN: This is a document the Court has
17 previously excluded. It was previously marked as A-231. The
18 Court excluded this document.

19 THE COURT: The copy I have of it here is mostly
20 blank pages.

21 MS. MELL: That's the correct document, Your Honor.

22 MS. CHIEN: It was excluded previously.

23 MS. MELL: My question is whether or not it is an
24 official position of the Department with --

25 MR. BERGER: Your Honor, there is a motion --

1 objection pending.

2 THE COURT: Yes, just a minute. What I have, you say
3 it is the accurate copy of A-305. There is nothing relevant
4 in it.

5 BY MS. MELL:

6 Q Ms. Fellin, did you receive any documents that reflected
7 an official position of anyone with the State of Washington
8 on the application of the Minimum Wage Act --

9 MS. CHIEN: Objection.

10 BY MS. MELL:

11 Q -- to the detainees at the Northwest ICE Processing
12 Center?

13 MS. CHIEN: Objection.

14 MR. BERGER: Objection.

15 THE COURT: The objection is sustained.

16 BY MS. MELL:

17 Q Ms. Fellin, did you ever craft an email for purposes of
18 taking an --

19 MS. CHIEN: Objection.

20 MR. BERGER: Objection, Your Honor. I think --

21 THE COURT: Yeah, the objection is sustained,
22 Ms. Mell. Don't go there.

23 BY MS. MELL:

24 Q Ms. Fellin, have you authored or expressed a position that
25 reflects the formal position --

1 MR. BERGER: Objection.

2 MS. CHIEN: Objection.

3 MS. MELL: I get to ask whether or not there is a
4 formal official position. That is expressly within the
5 Court's ruling.

6 THE COURT: Well, your questions did not go to that
7 question now, whether there is an official position or
8 something.

9 MS. MELL: I may ask that, though, right?

10 THE COURT: I don't know. Ask and we will see.

11 MS. MELL: Thank you, Your Honor.

12 BY MS. MELL:

13 Q Ms. Fellin, is there or has there been an official
14 position of the Department of Labor & Industries with regard
15 to the application of the Minimum Wage Act to detainees at
16 the Northwest ICE Processing Center who volunteer in the work
17 program there?

18 MS. CHIEN: Objection to the "has been."

19 THE COURT: Sustained.

20 BY MS. MELL:

21 Q Ms. Fellin, can you tell me whether or not the Department
22 of Labor & Industries has ever weighed in, in an official
23 way, with regard to the application --

24 MS. CHIEN: Objection.

25 THE COURT: The objection is sustained.

1 BY MS. MELL:

2 Q Is there an official position of the Department on whether
3 or not the exemption contained within 49.46.010 for state
4 detainees is also applicable to the Northwest ICE Processing
5 Center?

6 A I would have to check with the policy staff to know if
7 there is an official position.

8 Q Do you know whether or not the Department has ever applied
9 the State exemption --

10 MS. CHIEN: Objection --

11 BY MS. MELL:

12 Q -- to detainees?

13 THE COURT: I think the objection would be sustained
14 if you completed your question.

15 BY MS. MELL:

16 Q Has the Department of Labor & Industries enforced the
17 Minimum Wage Act against federal employees?

18 MS. CHIEN: Objection, foundation.

19 THE COURT: I think she may answer if she knows.

20 THE WITNESS: I don't know the answer to that.

21 BY MS. MELL:

22 Q Are you unaware of any cases like that?

23 A Yeah, I am not aware of cases like that.

24 Q Are you aware of the Department of Labor & Industries
25 seeking to enforce the Minimum Wage Act against any of the

1 federal prisons or detention centers?

2 MS. CHIEN: Objection, foundation.

3 THE COURT: No, I think she may answer that question,
4 if she knows.

5 THE WITNESS: I am not aware of that type of
6 enforcement action. I wouldn't know in my role, necessarily.

7 BY MS. MELL:

8 Q In your role, if the Governor's office got involved, then
9 you might know, correct?

10 A I may know if they asked me, and I could coordinate the
11 input of our staff. Unless they involve me, I would likely
12 not know.

13 Q Has the Department -- has the Department of Labor &
14 Industries made it pretty straightforward and simple to file
15 a Minimum Wage Act complaint?

16 A Well, yes, over the last several years we have made it
17 possible to file online, which has increased the number of
18 complaints that we have received.

19 Q That online format, doesn't it invite the individual who
20 is making the complaint to provide documentation of their
21 wage claim?

22 A I am guessing that is true. I haven't looked at the
23 online application myself.

24 Q Do you know if one of the documents that the Department
25 seeks from an individual making a Minimum Wage Act complaint

1 is a written wage agreement?

2 A I don't know that specifically, no.

3 Q So if L&I receives a complaint through its online
4 platform, then L&I opens an investigation, correct?

5 A That's my understanding, yes.

6 Q So part of that investigation includes taking down
7 information from the employee, getting specific documentation
8 to the hours actually worked, correct?

9 A Seems reasonable, but I have never done that. I can't
10 speak knowledgeably about that process.

11 Q Are you familiar enough with the process to know that L&I
12 usually contacts the employer for a response and gives them
13 an opportunity to either document their case or object --

14 MS. CHIEN: Objection.

15 BY MS. MELL:

16 Q -- on legal grounds?

17 THE COURT: The form of that question is
18 objectionable, counsel.

19 BY MS. MELL:

20 Q In an L&I investigation of the Minimum Wage Act, does L&I
21 talk to the employer?

22 A I don't know that. I have never done an investigation.
23 It would seem likely.

24 Q Is it pretty typically the case that Labor & Industries
25 works with employers to come into compliance with the law?

1 MS. CHIEN: Objection, foundation.

2 MR. BERGER: Objection, foundation.

3 THE COURT: Sustained.

4 BY MS. MELL:

5 Q Is it correct that L&I takes whatever information it
6 obtains in the investigation and then issues findings?

7 MS. CHIEN: Objection, foundation.

8 MR. BERGER: Objection, foundation.

9 THE COURT: Well, she can answer if she knows. If
10 you don't know, just say so, Ms. Fellin.

11 THE WITNESS: I would say that L&I does a whole
12 variety of investigations. I am aware of the process for
13 several of our programs that we issue findings or letters of
14 compliance, those kinds of things.

15 BY MS. MELL:

16 Q Those are findings that are communicated to the employer,
17 correct?

18 A That's what I am told, yes. I don't do that, but yes.

19 Q Then those -- then the employer can resolve it or can
20 contest it, correct?

21 A That is generally the case, yes, I think.

22 Q If the employer is taking a position that L&I believes is
23 inconsistent with the law, L&I can formally file a legal case
24 against the employer, correct?

25 A Again, my understanding is it would depend on the specific

1 program. In general, there is a process for adjudicating
2 disagreements under the law, yes.

3 Q In fact, L&I is, in fact, the agency expressly authorized
4 to enforce the Minimum Wage Act, correct?

5 MS. CHIEN: Objection.

6 THE COURT: She may answer.

7 THE WITNESS: I believe so when it comes to the State
8 minimum wage and the jurisdiction under the statute, yes.

9 BY MS. MELL:

10 Q Called the Wage Payment Act, right?

11 A Now you are getting into specifics I am not entirely sure
12 of. I would, again, speak with the program staff.

13 Q Are you familiar with the Director's orders on the Wage
14 Payment Act?

15 A No, I am not.

16 Q Are you aware the Department of Labor & Industries files
17 formal complaints and lawsuits against employers to enforce
18 the Minimum Wage Act?

19 MS. CHIEN: Objection, relevance.

20 THE COURT: She may answer if she knows.

21 THE WITNESS: I am trying to think -- I would guess
22 that is the case. I am not sure that I have ever been
23 notified of that kind of action on the Department's behalf.
24 I have certainly never been part of any of that.

25

1 BY MS. MELL:

2 Q Do you know that L&I isn't the named party or plaintiff in
3 this case?

4 MS. CHIEN: Objection, relevance.

5 THE COURT: She may answer.

6 THE WITNESS: I don't know that, no.

7 BY MS. MELL:

8 Q Do you know -- well, did you have -- strike that.

9 Do you have any knowledge about whether or not the
10 Department was asked to be a party plaintiff in this action?

11 A I don't recall, no.

12 Q Is Joel Sacks the director?

13 A Yes, Joel Sacks is the director.

14 Q Did you have a conversation with Joel Sacks a few days
15 before this lawsuit got filed?

16 MS. CHIEN: Objection, relevance.

17 THE COURT: She may answer.

18 THE WITNESS: I am only vaguely aware of when the
19 lawsuit was filed. In my role, I speak daily with the
20 Director. I don't know how to answer more specifically than
21 that.

22 BY MS. MELL:

23 Q Do you remember that it wasn't the Director's idea to file
24 a lawsuit against GEO?

25 MS. CHIEN: Objection, this goes to motion in limine

1 No. 1 about prosecutorial discretion.

2 THE COURT: Yes, the objection is sustained.

3 BY MS. MELL:

4 Q Do you remember dealing with Jorge Barone of the Northwest
5 Immigration Rights Project?

6 MS. CHIEN: Objection, relevance.

7 THE COURT: I don't understand the question, I guess.
8 Restate it.

9 BY MS. MELL:

10 Q Did you ever communicate to GEO the Department of Labor &
11 Industries' position on the application of the Minimum Wage
12 Act to it?

13 MS. CHIEN: Objection, relevance.

14 THE COURT: She may answer.

15 THE WITNESS: Yeah, I don't recall.

16 BY MS. MELL:

17 Q Do you know that if you knew the Department had a position
18 on the Minimum Wage Act case that you didn't communicate to
19 GEO?

20 MS. CHIEN: Objection, confusing.

21 THE COURT: She may answer.

22 THE WITNESS: I am not entirely sure what the
23 question was. If you can say it again.

24 BY MS. MELL:

25 Q Did you have knowledge on the State's position on the

1 application of the Minimum Wage Act to GEO that you chose not
2 to share with GEO?

3 MR. BERGER: Objection, relevance.

4 THE COURT: Sustained. Sustained.

5 BY MS. MELL:

6 Q Typically, does the Department notify an employer if the
7 Minimum Wage Act is at issue with regard to the people in its
8 custody or whom it employs?

9 MS. CHIEN: Objection, relevance.

10 THE COURT: That is kind of a compound question.
11 Break it up.

12 BY MS. MELL:

13 Q If the Department has taken a position on the application
14 of the Minimum Wage Act specific to an employer, does the
15 Department inform the employer?

16 A I don't know that. I would say that the Department
17 doesn't typically make affirmative statements in this area.
18 I am told that we are more likely to respond to a wage
19 complaint than make -- or initiate that kind of contact.

20 Q What do you mean? You typically respond to individualized
21 complaints? You don't file lawsuits?

22 A I thought the question was whether or not we notify the
23 employer.

24 Q Right. I think you gave an answer that I am following up
25 to that might not have been responsive. I am trying to keep

1 pace with what you were saying. Is it correct that L&I
2 responds to individualized wage complaints, it doesn't
3 typically file lawsuits against employers?

4 MS. CHIEN: Objection, relevance. Prosecutorial
5 discretion.

6 THE COURT: Sustained.

7 BY MS. MELL:

8 Q Is it correct that you, yourself, have never informed GEO
9 that the Minimum Wage Act applies to the ICE detainees at the
10 Northwest ICE Processing Center?

11 MS. CHIEN: Objection, relevance.

12 THE COURT: She may answer.

13 THE WITNESS: I don't recall communicating with GEO.

14 BY MS. MELL:

15 Q Did you have knowledge about GEO and the Minimum Wage Act
16 that you chose not to communicate with GEO?

17 MR. BERGER: Objection.

18 MS. CHIEN: Objection.

19 THE COURT: The objection is sustained.

20 BY MS. MELL:

21 Q To the best of your knowledge, the Department of Labor &
22 Industries never reached out to GEO or the federal government
23 to resolve any issues the Department had about the
24 application of the Minimum Wage Act to the detainees at the
25 Northwest ICE Processing Center, correct?

1 MS. CHIEN: Objection, relevance.

2 THE COURT: Sustained.

3 MS. MELL: I have nothing further, Your Honor.

4 MS. CHIEN: The State has no questions.

5 THE COURT: Mr. Berger, Mr. Whitehead?

6 MR. BERGER: Plaintiffs have no questions.

7 THE COURT: All right. Thank you, Ms. Fellin. You
8 may be excused.

9 THE WITNESS: Thank you.

10 THE COURT: You may call your next witness.

11 MS. CHIEN: Ms. Mell, can you tell us who you would
12 like us to tee up?

13 MR. SILVERMAN: Next up would be Debra Jean Eisen.

14 MS. CHIEN: We are just trying to get her the
15 documents, counsel.

16 MR. SILVERMAN: Thank you.

17 THE CLERK: The witness is in the process of joining.

18 THE COURT: If you will raise your right hand and be
19 sworn.

20 DEBRA JEAN EISEN,

21 having been sworn under oath, testified as follows:

22 THE COURT: You may inquire, counsel, Mr. Silverman.

23 DIRECT EXAMINATION

24 BY MR. SILVERMAN:

25 Q Good morning, Ms. Eisen. How are you?

1 A Good morning. I am fine, thank you.

2 Q Could you state and spell your name for the record?

3 A Debra, D-E-B-R-A, J, Eisen, E-I-S-E-N.

4 Q What is your current job title?

5 A I am the contracts administrator for the Washington State
6 Department of Corrections.

7 Q What are your job responsibilities at the Washington State
8 Department of Corrections?

9 A I manage the office of contracts and legal affairs for the
10 agency.

11 Q When you manage those contracts, do you manage both
12 contracts where the State of Washington is putting prisoners
13 somewhere as well as contracts where some other entity wants
14 to put its prisoners into a State facility?

15 A Well, my office drafts contracts. We work with the
16 program personnel in the drafting, and I sign them. We do
17 not manage the contracts. Those are managed by program
18 personnel.

19 Q When you draft contracts, for instance, isn't it true that
20 you draft contracts where the State of Washington would be
21 potentially putting some of its incarcerated folks into a
22 facility that it doesn't own?

23 A Yes.

24 Q Do you also draft contracts where another governmental
25 entity may be putting incarcerated folks into a facility that

1 the State of Washington does own?

2 A The office does, but those contracts are quite old so they
3 have not been drafted in quite some time. Yes.

4 Q Let me start. Are you the contract under which ICE, the
5 federal entity, has put some of its detainees into the Yakima
6 County facility?

7 A No.

8 MS. CHIEN: Objection, foundation.

9 THE COURT: She answered in the negative. Her answer
10 may stand.

11 BY MR. SILVERMAN:

12 Q Great. Let me talk about a contract which I think you are
13 familiar with. Provided to you was a contract which was
14 labeled A-023 between the State of Washington Department of
15 Corrections and GEO. Do you have a copy of that contract
16 before you?

17 A May I open the envelopes that were given to me? I have
18 not opened anything.

19 Q It is like who won the Academy Awards. I think we are
20 doing better than they did.

21 A May I open these things now?

22 Q Please open the sealed envelope.

23 A There are two envelopes. I don't know where that would
24 be, but I will look for it. This is not the contract.

25 MS. CHIEN: Can you remind the witness what exhibit

1 she should be looking for?

2 BY MR. SILVERMAN:

3 Q It is the contract you saw at your deposition, the
4 contract between the State of Washington Department of
5 Corrections and GEO?

6 A Yes, contract No. 10825; is that correct?

7 Q Yes. Do you recognize this document?

8 A I do.

9 Q Can you tell me what it is?

10 A It is a contract between the State of Washington
11 Department of Corrections and the GEO Group.

12 MR. SILVERMAN: At this time, I would offer Exhibit
13 A-023 into evidence.

14 MS. CHIEN: No objection.

15 MR. BERGER: No objection.

16 BY MR. SILVERMAN:

17 Q Can you tell me --

18 THE COURT: Wait a minute, wait a minute, counsel.
19 A-023 may be admitted.

20 (Exhibit A-023 was admitted.)

21 BY MR. SILVERMAN:

22 Q You don't need to do this on the screen. If you look at
23 page 32 of 31, ma'am, yes, that's how it is labeled, if you
24 take a look at the signature page.

25 A 32 of 31?

1 Q Yep.

2 A Okay. I don't see a 32. I am searching.

3 Q On the lower right-hand corner there are two numbers, the
4 first of which is WA 00011388. That's the signature page.

5 A Okay.

6 Q My question for you is: When was the contract signed?

7 A May of 2015.

8 Q Who signed on behalf of the State of Washington Department
9 of Corrections?

10 A Gary Banning.

11 Q Who is that person?

12 A Gary was a predecessor who was at that time the contracts
13 administrator.

14 Q On the left it says, "Approved as to form only, Washington
15 Assistant Attorney General." What does that mean?

16 A That means the form of the contract, but not the content
17 was approved by the Office of the Attorney General.

18 Q Let's turn back to the first page. That is on the screen
19 right now. At the bottom of the screen, the bottom of every
20 page says "State of Washington Department of Corrections."

21 Is that a standard format that the State uses on its
22 contracts?

23 A Yes.

24 Q Is this contract, the drafting of it, is it initially
25 drafted by the State or by the entity that it contracts with?

1 A Typically, the State would draft contracts for which it
2 pays for the service, if there is payment involved. This
3 particular contract, because of its format, I believe was
4 drafted by the State, by Corrections.

5 Q Would you take the blowout off?

6 If you can look at the third -- the second "whereas" on
7 Page 1, "Whereas, GEO has available beds in its detention
8 system hereafter referred to as 'the facility'?"

9 A Uh-huh.

10 Q Why is that line there?

11 A Well, the "whereas" are generally to explain the
12 development of the contract, the reasons for the contract.

13 Q Then the next line states, "The facility is a correctional
14 facility operated by GEO in which inmates may be lawfully
15 confined." Fair to say this contract contemplates the State
16 of Washington, if it had the need, would be putting folks
17 into a GEO-owned facility?

18 A I can't say that because I didn't write this, but I can
19 say elsewhere it does discuss that.

20 Q We will get to it. On the bottom of Page 1 it defines
21 "offender." States, "Any person incarcerated pursuant to
22 applicable Washington laws and assigned to the facility for
23 housing under this contract." What was your understanding as
24 to what kind of folks would be potentially placed in a GEO
25 facility under that sentence?

1 MS. CHIEN: Objection, foundation.

2 THE COURT: She may answer.

3 THE WITNESS: Well, anyone sentenced by a court to
4 more than a year of incarceration would be housed in a DOC --
5 Washington State DOC facility in Washington State. I mean,
6 anyone in Washington State sentenced.

7 BY MR. SILVERMAN:

8 Q Let's turn to Page 2. If you look at the term, it
9 indicates the term is -- was to start May 1, 2015, correct?

10 A Yes.

11 Q So be fair to say that the contract wasn't signed until
12 two weeks after the term started, correct?

13 A That's when the agency signed. I didn't see when GEO
14 signed. Both parties signed on --

15 Q It wasn't signed until about two weeks after the term
16 began, correct?

17 A Yes.

18 Q Section 2.03 provides for termination for convenience. Do
19 you know whether this contract was ever terminated for
20 convenience prior to the end of the term?

21 A My understanding is it was not.

22 Q If you can turn to Page 4, Section 305. There it provides
23 that offenders will be paid two dollars or whatever the
24 standard wage is for calendar work day when the work is six
25 or more hours per day.

1 MS. CHIEN: Objection, incomplete reading of the
2 document.

3 MR. SILVERMAN: Great.

4 BY MR. SILVERMAN:

5 Q Can you read this provision for us?

6 A Do you mean me?

7 Q Yes.

8 A "3.05. Offender work program assignment payment. WDOC
9 offender shall be paid \$2, or the standard wage for that
10 assignment, whichever is greater, per calendar work day when
11 the work assignment of six or more hours per day less
12 deduction for mandatory payments required by RCW 72.09.111."

13 Q Was it your understanding that this contract requires an
14 offender to work at least six hours to make the two dollars?

15 A Well, that is what the language seems to indicate. I
16 didn't write the contract, but that's what the language seems
17 to indicate.

18 Q Do you know again in your role whether the two dollars was
19 a requirement of the State or whether it was a requirement of
20 GEO?

21 A No, I do not.

22 Q Have you seen similar two dollar rates in other DOC
23 contracts?

24 A I have not.

25 Q There is a provision there that says "less deduction for

1 mandatory payments required by RCW 72.09" -- let me restate.
2 I put dashes where there weren't dashes. You see the
3 statement regarding deduction for mandatory payments?

4 A Yes.

5 Q What is your understanding of what those mandatory
6 payments are?

7 A They include things -- I cannot name them all. They
8 include things like child support, crime victim's
9 compensation, those kinds of things that the incarcerant is
10 supposed to be paying for or paying towards.

11 Q Does paying towards the cost of incarceration, is that one
12 of the payments that may be required?

13 A I do not know.

14 Q We will come back to that.

15 A Okay.

16 Q Let's move down to the next paragraph. It begins, "After
17 each permanent move." Talks about, to the extent that
18 someone moves they can receive a transitional stipend of one
19 dollar per day. Do you know what that provision is intended
20 to do?

21 A I have no idea. I have not seen that any place else.

22 Q Is the opportunity for an incarcerant to do work a
23 provision in every State contract where it contracts another
24 entity to provide housing or detention services for a State
25 of Washington incarcerant?

1 A By RCW, incarcerated individuals are required to work in
2 certain work programs within the facility. I have seen in
3 contracts when we house incarcerants in state facilities and
4 it would be with other government or tribal facilities, there
5 is a provision that says that they will have the same access
6 to work programs as the other people incarcerated in that
7 facility.

8 Q It would be fair to say the reason for -- strike that.

9 Fair to say the reason to have offenders work is so
10 that the offenders are occupied during that incarceration,
11 correct?

12 A I think there are probably many reasons for it. That
13 would be one reason for idleness. Not the only reason,
14 certainly.

15 Q It would be fair to say it is a safety and security choice
16 for Department of Corrections, correct?

17 MS. CHIEN: Objection, foundation.

18 THE COURT: Sustained.

19 BY MR. SILVERMAN:

20 Q Is safety and security one of the considerations for the
21 reason that the Department of Corrections provides a
22 mandatory work opportunity?

23 A Well, a court determines that. The RCW says they shall
24 participate in these work programs. The court has made that
25 determination.

1 Q Is it also a safety and security choice for the Department
2 of Corrections?

3 A You know, I work in the contracts office. I do not make
4 the decisions for the prisons division as to why they might
5 do one thing or another, or privy to that information.

6 Q Do you remember when your deposition was taken in this
7 case?

8 A I do.

9 Q The deposition was transcribed by somebody who had to use
10 a miracle machine, correct?

11 A Yes.

12 Q You were sworn to tell the truth?

13 A Yes.

14 Q And under penalty of perjury. All right, if you take a
15 look at Page 7 of your deposition. The exact line, Lines 20
16 to 23. You were asked, "Is it a policy choice of the
17 Department of Corrections?" You answered, "It is a safety
18 and security choice for the Department of Corrections."

19 A You are right, I did.

20 Q Is that a correct statement?

21 A I did say that, yes.

22 Q Let's go back to the contract.

23 A Okay.

24 Q In your other contracting regarding potentially moving
25 offenders from one facility to another, is the, quote,

1 "transitional stipend of one dollar per day" common?

2 A No, it is not. As I said, I have not seen that in the
3 contracts we have in State for housing.

4 Q Then let's turn to the second bullet point below that.
5 The section says, "To be eligible for the transitional
6 stipend the offender must," and then the second line is, "be
7 on a waiting list for work assignments."

8 Are you aware of any other contracts where an offender
9 may receive some sort of stipend for being on the waiting
10 list to work?

11 A I am not.

12 Q Do you have any knowledge or familiarity with this
13 provision?

14 A I do not. Again, I don't believe that it's standard in
15 our contracts for other housing with government entities.

16 Q Okay. Let's turn to the next page, which is Section
17 4.01.3. Be fair to say that one of GEO's obligations is to,
18 quote, "make available work training and treatment programs,"
19 correct? It is the fourth line down.

20 A Yes, make available work, training and treatment programs,
21 yes.

22 Q That's something that GEO is obligated to do under this
23 contract, correct?

24 A I am reading. Yes.

25 Q Let's move down a couple of lines and move to the left

1 hand, which it states, "Otherwise comply with applicable
2 law." You see that?

3 A Yes.

4 Q That's an obligation that GEO has under the contract,
5 correct?

6 A Yes.

7 Q Let's turn to the next page. Take a look at 4.02.4. This
8 requires GEO to permit the Washington Department of
9 Corrections to monitor all activities pursuant to the terms
10 of the contract, correct?

11 A Yes.

12 Q And how -- under your normal contracts, how does that
13 monitoring work?

14 A Well, sometimes site visits are conducted. There is a lot
15 of communication back and forth by phone or nowadays by teams
16 or however. There is exchange of -- there is paperwork,
17 files. There is a lot of information that is exchanged in
18 monitoring.

19 Q Does the Department of Corrections actively monitor these
20 contracts as opposed to just having the right to do so?

21 A I -- again, you know, I am not a program staff person so I
22 don't physically do the monitoring or have management over
23 the contracts. I would assume so, that they would.

24 Q Is the right to monitor a nonnegotiable provision in all
25 Washington Department of Corrections contracts?

1 A I can't answer that because there are so many types of
2 contracts.

3 Q In a contract to put one of the State's incarcerants in a
4 facility, are you aware of the State ever signing one of
5 those contracts where it didn't have the right to monitor the
6 facility the person was going into?

7 A I cannot say unequivocally, but I would assume, based on
8 my work, that there would always be a monitoring provision.

9 Q Let's turn to the next paragraph, 2.02.5. This gives the
10 Washington --

11 A Did you say 2.02?

12 Q I'm sorry. 4.02.05. I may have given you my ATM PIN
13 number by mistake. Ignore that.

14 A I'll check it out later.

15 Q You'll be disappointed. Look at 4.02.05. This gives the
16 State of Washington the right to assign an onsite manager to
17 ensure compliance?

18 A Yes.

19 Q Is that something the State customarily requires in
20 contracts like that?

21 A I don't know whether it is customary or not. This
22 contract was never used, so these provisions were never
23 invoked. I don't know.

24 Q Let's talk about other contracts the State has had. Is
25 this a common provision that the State inserts in contracts?

1 A I don't know. I don't know because, as I mentioned
2 earlier, the contracts for housing folks in out-of-state
3 prisons with other governments are very old and I did not
4 draft them. Some of them are from the '90s. I am not as
5 familiar with that language. I just cannot say.

6 Q Let's take it up to today. As we sit here today, does the
7 State of Washington, through median and intergovernmental
8 agreement, put incarcerated in facilities it doesn't own,
9 could be a county or municipality?

10 A Yes, we do. We have contracts with all the counties in
11 Washington State and some tribal jails.

12 Q In those contracts, does Washington reserve the right to
13 have an onsite manager?

14 A I would have to look at the language of the contract. I
15 don't know. I don't know.

16 Q Do you have any personal knowledge whether the Department
17 of Corrections actually has onsite managers in any of the
18 contracts you have done intergovernmental agreements for?

19 A The only situation I can speak to is we had a contract
20 with Yakima County in Washington State for housing. There
21 was language about onsite personnel. My recollection is that
22 was more program personnel. I can't say for sure whether
23 there was anyone there acting in a management capacity. I
24 know we did have program personnel on site in Yakima.

25 Q Yakima, is that a county facility?

1 A Yes.

2 Q Yakima County runs that?

3 A Yes, it is their prison. We no longer have incarcerants
4 there, but we did.

5 Q Do you recall when you had incarcerants there whether they
6 were part of a work program?

7 A I don't know. That would be operational. I don't know.

8 Q Let's get back to stuff in the contract so it is easier to
9 determine whether you know it or not. Let's go to the next
10 section, 4.03. This section provides that GEO shall provide
11 health services, medical, dental and otherwise. Is that a
12 customary provision in contracts?

13 A Yes. Yes.

14 Q Do you know whether or not those health services are free
15 to the incarcerant?

16 A I believe that they are for the most part, but I can't say
17 that all services -- the Department is responsible for
18 medically necessary care for incarcerated individuals. There
19 may be some kind of co-payment from the incarcerant for
20 off-site care, meaning off site, taken from a facility to a
21 private practitioner or hospital, but I cannot say for
22 certain that this contract would have had that. I don't
23 know.

24 Q Not going to be a memory test. There is a co-pay
25 provision we are going to go through later. I was asking for

1 your general understanding. If you can turn to Page 11. It
2 is Section 4.05.1.

3 A Yes.

4 Q Called "offender work and programs." Take a look at these
5 sections. Are these standard terms of Washington agreements
6 or are they customized for this specific contract?

7 A Just for -- I know that contracts to house incarcerants in
8 other public facilities do contain provisions about
9 participation in work programs. I cannot say whether this is
10 the same language.

11 Q Let's turn to 4.05.2. This provision requires all
12 eligible offenders will be productively occupied for at least
13 30 hours per week in work, educational, vocational or major
14 habilitation programs. Where does the 30 hours come from?

15 A I do not know.

16 Q Have you seen other contracts in the state of Florida --
17 sorry, State of Washington -- I've got GEO on the brain -- of
18 which -- which are a lower number or higher number than 30
19 hours a week?

20 A Not that I can recollect.

21 Q What is your understanding of the purpose of this
22 subsection?

23 A I didn't write it. Reading it, it is pretty clear on its
24 face, the first sentence about 30 hours per week. The second
25 sentence is clear as well that, "Payment shall not be

1 rendered for a program that the State of Washington would not
2 pay for participation in." It is clear on its face.

3 Q Great. Let's turn to 4.09. GEO is responsible for
4 providing clothes and clean laundry to the offender, correct?

5 A Yes.

6 Q Do you know whether that is for a charge or without a
7 charge?

8 A I don't know.

9 Q Let's turn to Paragraph 5.03. That is Page 21 of 31.
10 Blowout Section 5.03. This talks about the mandatory
11 training of the GEO personnel.

12 A Uh-huh.

13 Q Is this a standard provision that the State of Washington
14 imposes in contracts with the facility where it is putting
15 State of Washington incarcerants?

16 A I am not sure. I don't know.

17 Q Have you seen this in other contracts?

18 A I can't say for certain. I know training is required. I
19 don't know if this is the same language.

20 Q Do you know where the 160 minimum hours of curriculum
21 comes from?

22 A No, I do not.

23 Q Do you know whether this was requested by the State of
24 Washington or by GEO?

25 A I have no idea.

1 Q This training requirement requires all personnel who
2 supervise, confine or care for the State of Washington
3 offenders who are put in that facility, correct?

4 A That's what the language says. It is not anything I know
5 independent from that.

6 Q It says, "Before they begin to work." It would be your
7 understanding they are not allowed to have on-the-job
8 training to get to 160, they have to hit 160 before they
9 start?

10 A Yes, that's how I would interpret it.

11 Q Let's turn to the next page, Page 22. 6.02.01. It
12 indicates that GEO will bill \$60 per day per offender. Do
13 you see that?

14 A I do.

15 Q That is the rate from a 2015 contract. Do you know what
16 the current rate that the State of Washington is paying when
17 it puts its offenders into other folks' facilities?

18 A Well, to my knowledge, we are not housing for long-term.
19 What we have are violator contracts where if somebody does
20 not abide by the terms of their supervision, then they may be
21 locally put into a local jail until DOC can determine where
22 to go from there. So we call those violator contracts with
23 the counties. The rates vary. They are controlled by the
24 legislature. So right now -- well, until last year, the cap
25 was about \$80 a day. They range anywhere from the 60s to

1 maybe into the 90s now.

2 Q That's capped by the legislature, you just said?

3 A The amount. It was capped at \$80 a day until last year,
4 the cap was lifted, but the amount that it can be increased
5 is limited by the legislature to five percent per year.

6 Q Are you aware of whether the State of Washington was ever
7 able to negotiate a deal where it paid less than the cap?

8 A Well, some of those facilities, some of those state jails
9 or county jails -- local or county jails do earn less than
10 the cap because that's where they started at a lower rate,
11 that is what was negotiated when they had started. That's
12 the only -- those are the only circumstances I know of for
13 payments relating to housing.

14 Q Let's turn to Paragraph 9.05, that's Page 27 of 31.

15 Jurisdiction and venue talks about the selection of
16 Washington law, rules and regulations shall be applied in the
17 interpretation, execution and enforcement of this contract.
18 Do you see that? Is that common when the State of Washington
19 signs contracts under your purview?

20 A Usually, it relates to venue.

21 Q So the second sentence relates to venue, the first
22 sentence talks about the applicability of State of Washington
23 law to this contract. Do you see that?

24 A That is not what I commonly see.

25 Q Where was the facility that it was contemplated that this

1 contract would cover?

2 A There is mention of Michigan, but there is also mention of
3 other GEO facilities. It could be another state.

4 Q Let's turn to, if you look at the lower right-hand corner,
5 again, we are going to be past the contract. It is going to
6 be the first of the two numbers on the right-hand corner,
7 it's going to be WA 00011408. It is Page 6 of 22. It will
8 take a minute for us to magically make that appear. There is
9 a provision D. This is a policy regarding trust accounts for
10 offenders, you see that?

11 A Yes.

12 Q What's your understanding of what a trust account for
13 offenders policy would be for?

14 A The agency holds funds in trust for incarcerated
15 individuals. My understanding would be that this policy sets
16 the rules for how funds come and go and how they must be
17 managed and what they are for.

18 Q So it's your understanding that if an incarcerated receives
19 a stipend or money for participating in a work program, that
20 money goes into the trust account, correct?

21 A Yes, that's my understanding.

22 Q So this provision prohibits offenders from transferring
23 funds between each other. My question for you is: What is
24 your understanding, are offenders allowed to have any
25 businesses or any jobs while they are in these facilities,

1 other than the official program set forth by the facility?

2 A Do you mean outside of prison?

3 Q Yeah. Can an -- let's break it down. Which is, can an
4 offender buy stuff from the commissary and then resell it at
5 a profit to the other incarcerated folks?

6 A I don't know. I would think not, but I really don't know.

7 Q This provision, which is part of the contract, prohibits
8 the offenders from transferring money to each other. What
9 was your understanding of why this is included in the
10 contract?

11 A I don't know.

12 Q This trust account for offenders policy, have you seen
13 this attached to other contracts that your office has done in
14 terms of placing --

15 A No, I have not seen this policy before, actually.

16 THE COURT: Counsel, we are a couple of minutes
17 early. I have a meeting at noon. I think we will break here
18 for lunch. The jury should come back at 1:00. We will
19 continue. I want to talk to counsel before counsel breaks,
20 but the jury may be excused.

21 (The following occurred outside the presence of the jury.)

22 THE COURT: We just spent considerable time on this
23 contract and Ms. Eisen testified the contract was never used.
24 So why are we spending time on it?

25 MR. SILVERMAN: Because, Judge, this is an overflow

1 contract by the State of Washington. So if they need to put
2 their incarcerated somewhere, they can. When they negotiated
3 with GEO to do that, every one of the elements that we heard
4 during direct that is a bad thing about GEO, they put in
5 their own contract. The fact that they never actually put
6 any prisoners there under the contract isn't relevant. This
7 is what the State demands in its own contracts when it
8 reserves the right to --

9 THE COURT: All right. Okay. Is this contract still
10 in effect?

11 MR. SILVERMAN: It expired in 2018.

12 THE COURT: Expired of its own weight in 2018?

13 MR. SILVERMAN: Yes.

14 THE COURT: All right. Thank you. We will reconvene
15 at 1:30. I have a court meeting at -- another Zoom deal. I
16 hope we will be ready to go at 1:00. It could be a few
17 minutes late. Thank you.

18 (Recessed.)

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AFTERNOON SESSION

JUNE 10, 2021

(The following occurred outside the presence of the jury.)

THE COURT: We had a court meeting. The good news is the three nominees for vacant positions in this district had their Senate committee hearing this last week. There is no apparent problems. We are hoping for -- that they will get to the floor of the Senate here within a matter of a few weeks. With luck, we might have a new judge in Tacoma by August, who would take my position, which has gone through another judge's full term. I took senior status in 2000, and Ron Leighton was appointed in 2002, I think. He retired fully in August. It is that same position, which was the second position in Tacoma that we think Judge David Estudillo in Grant County will take that position.

Are we ready now to proceed with Ms. Eisen? Yes. I see her here. Bring the jury in and we can go to work.

(The following occurred in the presence of the jury.)

THE CLERK: The jurors are back.

THE COURT: Okay. We have lost Ms. Mell.

MS. MELL: No, I am here. Okay. Mr. Silverman. Go ahead.

BY MR. SILVERMAN:

Q Good afternoon. Seems like ages since we talked. If you can turn to, in the contract, only a few more tabs, Bates

1 stamp WA00011413.

2 A I am there.

3 Q 416. See, after lunch. 416, not 413.

4 A Okay.

5 Q There we go. There is an indication of the debts that the
6 department collects and deductions out of incarcerant
7 accounts. You see that?

8 A Are you referring to E -- I see, referring to section II,
9 Roman Numeral II.

10 Q Yes, ma'am.

11 A I see that.

12 Q Let's go through 1 through 4, describe for me what kind of
13 things these refer to?

14 A I cannot because I am not familiar with the trust
15 accounting system or the requirements of it or the RCW.

16 Q These couple of pages list the kinds of deductions that
17 are to be made from an offender's account, correct?

18 A It does say that. I don't know what RCW 72.09.450 says
19 specifically. It refers to that and says the department will
20 collect debt in the following order. That is all I can tell
21 you.

22 Q Okay. If you don't know --

23 A I don't know.

24 Q That is always an answer in court.

25 Let's turn to WA00011429.

1 A Okay.

2 Q Page entitled "disciplinary sanctions."

3 A Yes.

4 Q This page lists the kinds of things that can be taken away
5 from an incarcerated, see that, subsection E?

6 A I do.

7 Q What is your involvement, if any, in inserting these
8 policies into a contract?

9 A Absolutely none because this contract with GEO obviously
10 is a custom contract. It is not what we typically do. They
11 are attaching the different policies which is not normally
12 what we do in our contracts. This contract was drafted and
13 signed before I was contracts administrator and I had no
14 involvement with it. I am not familiar with prison
15 operations. The sanctions would be under prison operations.

16 Q If you look at No. 10, which is removal from waiting list
17 for work or other program assignments as a potential loss of
18 privileges, are you familiar with that?

19 A Not other than what I am just reading now.

20 Q This is one of the policies attached to the contract,
21 correct?

22 A It is in this exhibit that I have, yes.

23 Q Last page, last page we are going to talk about in the
24 contract. I know everybody would be happy about that,
25 WA00011469.

1 A Okay. Okay.

2 Q You see the policy entitled "offenders in total
3 confinement facilities will be charged a co-payment to
4 participate in the cost associated with health care
5 services." Is it your understanding that incarcerated are
6 charged a co-payment for certain health care services?

7 A You know, I think this might be an out-of-date policy.
8 I -- I can tell you now that the position of the agency is
9 that people will be provided with medically necessary health
10 care. I don't think there are conditions attached to that.
11 I couldn't say for certain.

12 Q The co-payments are a requirement under this contract,
13 correct?

14 A According to the policy, yes. According to what you are
15 showing me now and what I am reading, that's the only thing I
16 can go by.

17 Q So we can put the contract down. You mentioned earlier
18 that no detainees or prisoners or incarcerated were sent to
19 GEO by the State of Washington under the terms of this
20 contract, right?

21 A Yes.

22 Q So fair to say this was an overflow contract that the
23 State had in place in case it needed it?

24 A Essentially was a convenience contract for both the
25 Department and for GEO because GEO had a right to refuse and

1 the Department had a right not to send.

2 Q In the past, the State of Washington has utilized other
3 private contractors under contract to house incarcerants,
4 correct?

5 A I only know of one, but yes, that would be correct.

6 Q The one other contract is Corrections Corporation of
7 America?

8 A That's my understanding, yes.

9 Q True that the State of Washington sent about 1,000
10 incarcerants to Correctional Corporations of America under
11 that contract?

12 A That's my understanding.

13 Q That contract also had a stipulated two dollar per day
14 payment to incarcerants for a minimum of six hours of work?

15 MS. CHIEN: Object, misstates the testimony.

16 THE COURT: Objection is overruled.

17 THE WITNESS: Would you please repeat that.

18 BY MR. SILVERMAN:

19 Q Under the Corrections Corporation of America contract,
20 isn't it true that the incarcerants that were sent to that
21 company by the State of Washington received a two dollars per
22 day payment for their work?

23 A Would you please point me to the provision in the contract
24 where the language is?

25 Q I don't have the contract, but do you remember that?

1 A Well, I remember there is something about two dollars a
2 day. I do not recall whether it was as in the GEO contract,
3 the greater of that amount or whatever is typically paid for
4 that type of work. I don't want to attest to that without
5 being sure of what this says. Maybe I can find it.

6 MS. CHIEN: Ms. Eisen, you have to be directed to my
7 documents by counsel.

8 THE WITNESS: Sorry. I am used to finding things in
9 the contract.

10 BY MR. SILVERMAN:

11 Q Do you remember when you were asked about this issue in
12 your deposition?

13 A I remember being asked about ACA. I don't specifically
14 remember what my answer was without looking at the
15 deposition.

16 Q Do you want to turn to Page 13 of your deposition?

17 A What exhibit is my deposition? Right here.

18 Q Page 13. Line 3, you were asked, "What were the
19 stipulations as to work?" You answered, "It stipulated to
20 wage for the offenders to work." You were asked, "What was
21 the wage for offenders to work?" You stated, "I believe it
22 was two dollars per day."

23 A I see that. What I would add to that now with becoming
24 more familiar with the GEO contract is it might say the
25 greater of, either the two dollars or the customary wage for

1 that type of work. I am not sure about that.

2 Q You were also asked in that regard, just -- again, it is
3 the bottom of Page 13 to the top of Page 14, the last line
4 25, "Just tell me what the two dollars was." Your answer
5 was, "It was payment to incarcerants that worked more than
6 six hours a day per day that CCA would pay them." You were
7 asked, "And tell me, two dollars a day is a" (inaudible) --
8 The answer was, "For working more than six hours per day, six
9 or more hours, I think it said six hours or six or more
10 hours."

11 A I see that. I did say that.

12 Q Is that accurate?

13 A It is what I said at the time, yes.

14 Q Did you have an opportunity to talk to counsel during the
15 lunch break that we all took?

16 A I had lunch with counsel. I had lunch with other
17 attorneys, but not with Ms. Chien.

18 Q Did you have any discussions about this case during lunch?

19 MS. CHIEN: Objection.

20 THE COURT: She may answer. Wait a minute.

21 MR. SILVERMAN: That is a yes or no.

22 THE COURT: She may answer.

23 THE WITNESS: We had some discussion. Yes, we had
24 some discussion.

25

1 BY MR. SILVERMAN:

2 Q So were any of the counsel that you had lunch with counsel
3 on the screen here in this case?

4 A Yes. Yes.

5 Q All right.

6 A I did not discuss the case with any of the counsel on the
7 screen.

8 Q Are you aware of detainees or incarcerants under DOC
9 jurisdiction doing subminimum wage work?

10 A Please ask that again.

11 Q Are you aware of detainees or incarcerants under DOC
12 jurisdiction doing subminimum wage work?

13 A We don't have detainees. Our folks are incarcerated, yes,
14 their wages are below minimum wage for the programs that I am
15 familiar with.

16 Q Earlier you used the term "violators" for folks who seem
17 to have probation potential violations?

18 A Yes.

19 Q Are you aware of any violators under DOC jurisdiction
20 doing subminimum wage work?

21 A I would say not. I am really not sure because violators
22 are usually in the jails for such a short period of time. It
23 is sort of a weigh station until they are transported back.
24 I don't know. I would suspect not because I don't think they
25 are in the jails long enough to be established in a work

1 program.

2 Q For the incarcerated under DOC jurisdiction doing
3 subminimum wage work, what kinds of work is that?

4 A Are you interested only in the prisons or other work
5 programs outside of the prisons?

6 Q Anybody who is an incarcerated that doesn't get to leave
7 the facility.

8 A That would be Class III work for supporting the prison
9 operations. Working in that class is required by RCW. The
10 types of work might be in the kitchen, in the laundry, office
11 work, janitorial work. It is not full-time. It is in
12 addition to programming and training and other things.

13 Q You mention Class III. What is Class III?

14 A There are five classes of the types of work that offenders
15 can participate in. My office deals -- writes contracts for
16 classes III, IV and V usually and is familiar with those.
17 Classes I and II, we are not familiar with.

18 Q What are Classes I and II?

19 A They are handled by Correctional Industries, another
20 division of the agency. They are -- I am not sure if it is I
21 and II or I or II, but there is the ability to work for
22 private contractors, and folks are still housed at the prison
23 but the work they do can be for a private company and they
24 paid minimum wage or more.

25 The classes I am familiar with -- III, IV and V -- are

1 paid subminimum wage, by statute they can be, or they are not
2 paid at all because it is considered community restitution.

3 Q Are all Class I and II work programs at minimum wage or
4 above?

5 MS. CHIEN: Objection, foundation.

6 THE COURT: I think you should rephrase the question.
7 I am not sure I understand it.

8 BY MR. SILVERMAN:

9 Q Ma'am, you just talked about some kinds of work projected
10 under Class II. To the best of your understanding and
11 knowledge, are all Class II work programs at minimum wage or
12 above?

13 A I don't know. I can't say for sure.

14 Q Does your division within Department of Corrections
15 contract with a company called Keefe?

16 A No. Currently, I don't believe so, no.

17 Q Does your division contract with a company called Telmate?

18 A I am not sure. I don't know. I would have to check.

19 Q For things like a commissary contract or the telephone
20 contract, does that go within your department?

21 A Yes, that would -- well, yes, it would be under my
22 purview, yes, for commissary, and in fact we are currently in
23 the midst of a procurement for telephones and other media
24 services.

25 Q Great. Do you have any knowledge as to whether for the

1 different classes of prisoner like you talked about, whether
2 all of them have deductions taken from their accounts for the
3 cost of their detention?

4 A I don't know. I would imagine so except for Class V
5 because they don't earn anything. I don't know. As I said,
6 I am not familiar with the trust accounting system and that
7 detail.

8 MR. SILVERMAN: No further questions, Your Honor.

9 THE COURT: Ms. Chien.

10 CROSS-EXAMINATION

11 BY MS. CHIEN:

12 Q Hi, Ms. Eisen. I would like to clarify some things. I
13 heard you talk about a DOC contract with Yakima. I want to
14 be clear, is that contract related to ICE?

15 A No.

16 Q DOC doesn't house immigration detainees; is that right?

17 A Correct.

18 Q Talk to me about the people who are incarcerated at DOC,
19 who does DOC incarcerate?

20 A We incarcerate people who committed a crime who have been
21 sentenced to a term of one or more years -- one year or more
22 by court of law.

23 Q How are they referred to as?

24 A Incarcerated individuals.

25 Q Does DOC incarcerate anyone based on civil or

1 administrative proceedings?

2 A No.

3 Q Are all physically capable DOC inmates required to work?

4 A The RCW requires work in Class III of incarcerants in the
5 prisons. They require some work along with the programming
6 and training and counseling and whatever else.

7 Q You have said "RCW." I want to make sure the jurors
8 understand. When you say "RCW," you mean a statute, a law
9 that requires them to work?

10 A Yes.

11 Q Let's talk about this contract that we have spent some
12 time on. I want to make clear, did DOC ever actually send
13 any DOC inmates to a GEO facility?

14 A No.

15 Q The contract -- is DOC's contract with GEO still in
16 effect?

17 A No.

18 Q When did DOC's contract with GEO expire?

19 A August of '18.

20 Q There was not a single DOC inmate who has participated in
21 a work program run by GEO; is that right?

22 A To my knowledge, yes, correct.

23 Q If DOC had sent inmates to that GEO facility, I understand
24 they didn't, if they had, did the DOC-GEO contract
25 contemplate that inmates would participate in a work program

1 and be paid?

2 A Yes.

3 Q Who would be responsible for managing that program?

4 A GEO.

5 Q Who would be responsible for identifying the work duties
6 and schedules?

7 A It would be GEO.

8 Q Who would be responsible for paying the inmates?

9 A The same, it would be the contractor, GEO.

10 Q We talked about what the contract set for the inmate pay
11 in the work program; is that right?

12 A Yes.

13 Q It said two dollars or the standard wage for that
14 assignment, whichever is greater; is that right?

15 A Yes.

16 Q What is the standard wage of the assignment mean?

17 A What incarcerants are typically paid for that work, that
18 type of work within the facility.

19 Q So the facility and GEO, if it has multiple different
20 types of incarcerants, not just DOC incarcerants, it would
21 have to pay what was typical of that facility?

22 A What anyone else that did that same work would be paid for
23 that same work.

24 Q So if GEO was paying the Michigan minimum wage to other
25 inmates in its facility, what would the GEO-DOC contract

1 require?

2 A That the Washington State incarcerants were paid the
3 minimum wage, then, for the same work.

4 Q Thank you. Do you suspect that the contract regarding CCA
5 that counsel asked you about had that same provision?

6 MR. SILVERMAN: Objection, Your Honor. Calls for
7 speculation.

8 THE COURT: Sustained.

9 BY MS. CHIEN:

10 Q I am going to ask you to turn to Exhibit A-89. I am going
11 to ask you to turn to page, I believe -- actually, let me
12 start. Do you recognize this document?

13 A Yes, I have looked at it once before or twice before.

14 Q Is this the CCA contract?

15 A Yes.

16 Q I am going to ask you to turn to where the pay is
17 indicated. Actually, you are actually the contract expert.
18 Can I ask you?

19 A I think it is 3.05 on Page 3. I located it. The bottom
20 of Page 3.

21 Q Does that provision look similar as the provision we are
22 talking about with the GEO contract?

23 A Yes. It is similar to.

24 Q Refers to the standard wage assignment, whichever is
25 greater?

1 A Yes.

2 Q Are you aware of whether or not DOC participated in a work
3 program under the CCA contract?

4 A I do not know.

5 Q Are you aware how much CCA paid inmates?

6 A I would not know.

7 Q Let's turn back to the contract that was never used, which
8 I believe is A-23.

9 MR. SILVERMAN: Objection, Your Honor.

10 THE COURT: State your objection.

11 MR. SILVERMAN: The preface to her question, which
12 she hasn't started, "let's turn back to the contract that was
13 never used."

14 THE COURT: The objection is overruled.

15 BY MS. CHIEN:

16 Q This contract that wasn't used, did it contain any other
17 requirements related to state law?

18 A Well, yes. I mean -- well, I think all of our contracts
19 contain a provision that says that state law -- state,
20 federal, constitutional law must be abided by, the contract
21 must be in conformance with law. This one --

22 Q Can we publish A-23. I want to make sure the jury is
23 following along. Turn to Page 5. I want to highlight the
24 first paragraph. I will do a call out so you can see it.

25 A It requires operation in accordance with operating

1 requirements. Those are defined in the definition on Page 2
2 as applicable federal, state, local law and court orders,
3 constitutional standards, et cetera.

4 Q Can you turn to Page 2? I want to make sure the jury is
5 going to follow the definition. That provision requires that
6 GEO comply with all state laws?

7 A Yes, it is at the top. All of our contracts require
8 adherence to law.

9 Q GEO's required to comply with federal, state and local law
10 under this contract?

11 A Yes.

12 Q One final question. Does DOC have any contract with any
13 private facilities, corporations or prison services within
14 the State of Washington?

15 A No.

16 MS. CHIEN: No further questions.

17 MR. SILVERMAN: I have some redirect.

18 REDIRECT EXAMINATION

19 BY MR. SILVERMAN:

20 Q Did the State of Washington cancel this contract at any
21 point prior to its natural termination date?

22 A Not that I know of.

23 Q If it did cancel it, would you know about it?

24 A You know, at the time of the contract I was not the
25 contracts administrator. So it ended August of '18. I

1 started as administrator in February of '18, I probably would
2 have known. I was the contracts administrator when it
3 naturally ended.

4 Q This lawsuit was filed in 2017. Between 2017 and the end
5 date of this contract, it was never cancelled by the State of
6 Washington, correct?

7 A Not that I know of.

8 Q It provides it can be cancelled upon convenience without a
9 reason, right?

10 A Uh-huh.

11 Q But it didn't. You can't say "uh-huh."

12 A Excuse me. Yes. Sorry.

13 Q Let's turn to Page 4 of the contract. At the very top,
14 Section 3.05. This is A-023, which is the GEO-State of
15 Washington contract at Page 4.

16 MS. CHIEN: This hasn't been moved into evidence. I
17 don't think it should be published.

18 MR. SILVERMAN: I offered A-023 in evidence at the
19 very beginning.

20 MS. CHIEN: I thought it was A-25.

21 THE COURT: Yes.

22 THE CLERK: A-025 was on the screen.

23 MR. SILVERMAN: We dropped it off. It is A-023.

24 Page 4 of 31. WA0011360.

25 THE WITNESS: Yes.

1 THE COURT: Wait a minute. The Bates number doesn't
2 mean anything until I figure out what are you talking about.
3 What is the exhibit number you are now discussing?

4 MR. SILVERMAN: A-023.

5 THE COURT: Has this been in admitted in evidence?

6 MR. SILVERMAN: Yes, Your Honor.

7 THE COURT: Okay. Go ahead.

8 BY MR. SILVERMAN:

9 Q Very top. Section 3.05. States, "The offender shall be
10 paid two dollars or the standard wage for that assignment or
11 whatever is greater."

12 A Yes.

13 Q You testified the standard wage for that assignment is the
14 standard wage at the facility, correct?

15 A Yes. That would be my supposition, yes.

16 Q This doesn't say "paid at least two dollars a day," does
17 it?

18 A Well, it does say it would be whatever is greater because
19 it says "or pay two dollars." It does set a floor of two
20 dollars. That's how I read it.

21 Q The only alternative to the two dollars is the standard
22 wage at the facility, correct?

23 A Provided that it is greater, yes.

24 Q Doesn't say "at least two dollars," correct? The words
25 "at least" are not there, are they?

1 A That is correct, but I don't really understand the
2 distinction that you are making.

3 Q The setting of the offender's work rate at two dollars per
4 day as opposed to \$14 a day, is the setting of the rate that
5 low based on the Washington law that exempts the State of
6 Washington Department of Corrections from paying the minimum
7 wage?

8 A No, because that's available to the state government, to
9 the department.

10 MR. SILVERMAN: No further questions.

11 THE COURT: Anything further?

12 MS. CHIEN: No, Your Honor.

13 THE COURT: Thank you --

14 MR. BERGER: Excuse me, Your Honor. Mr. Berger might
15 have questions.

16 THE COURT: How come when I ask if there are
17 questions, nobody speaks up and they speak up later?

18 MR. BERGER: I apologize.

19 THE COURT: No harm.

20 RECROSS-EXAMINATION

21 BY MR. BERGER:

22 Q What state did this contemplate overflow incarcerants
23 would be housed in?

24 MR. SILVERMAN: Objection.

25 THE COURT: Overruled.

1 THE WITNESS: The contract mentions Michigan and also
2 mentions "or GEO facility," I believe.

3 BY MR. BERGER:

4 Q Under the terms of the contract, would the laws of
5 Michigan or whatever other state the incarcerants were in
6 apply?

7 A Yes. Yes.

8 MR. BERGER: Thank you.

9 THE COURT: Thank you, Ms. Eisen. You may be
10 excused.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: You may call your next witness.

13 MS. MELL: Lynne Buchanan.

14 MS. CHIEN: Can we have a conference with this
15 witness outside the presence of the jury? We believe we are
16 going to have a similar issue.

17 THE COURT: The jury can be excused for a minute.
18 Take a stretch. Won't take long.

19 (The following occurred outside the presence of the jury.)

20 MS. CHIEN: Your Honor, the State would object to
21 this witness. I think you can see how the testimony would
22 play out, almost exactly the same as Ms. Fellin, which I
23 don't think was useful to anybody. Ms. Buchanan will only
24 testify to emails from 2014 related to the Northwest
25 Detention Center.

1 THE COURT: I don't know what she's going to testify
2 to. Certainly, we've got two witnesses that we spent a lot
3 of time on that didn't know much about anything having to do
4 with the case. I am not going to grant a motion in limine to
5 strike the witness because I don't know what they are going
6 to testify to. I hope we don't waste more time with people
7 that don't know the answers to the questions that are
8 appropriate to be asked.

9 Bring the jury back.

10 (The following occurred in the presence of the jury.)

11 THE COURT: We lost Juror No. 3, I see. Said to take
12 a break, I guess she's taking a break.

13 Ms. Buchanan, this is Judge Bryan speaking. Will you
14 raise your right hand and be sworn.

15 LYNNE BUCHANAN,

16 having been sworn under oath, testified as follows:

17 THE COURT: Thank you. You may inquire, counsel.

18 DIRECT EXAMINATION

19 BY MS. MELL:

20 Q Your name is again Lynne Buchanan; is that correct?

21 A Yes.

22 Q You are an employee of the State of Washington?

23 A Yes.

24 Q Employed with the Department of Labor & Industries?

25 A That is correct.

1 Q Your current title, I am not sure I know what it is. Can
2 you give me that?

3 A Sure. I am an internal investigator.

4 Q Have you been the employment standards program manager at
5 Labor & Industries?

6 A Yes, I have in the past.

7 Q Was that position different than an internal investigator?

8 A Oh, yes.

9 Q Was it a management position?

10 A It was -- yes, it was.

11 Q What tier? Who did you report to, Joel or did you -- the
12 Director Joel Sacks or someone below him?

13 A I reported to someone below him.

14 Q Who was that?

15 A Elizabeth Smith.

16 Q Is Elizabeth Smith the number two at the Department of
17 Labor & Industries in terms of hierarchy?

18 A She currently is on a team of number twos.

19 Q With regard to being an internal investigator, is that in
20 the wage and hour division or some other part of Labor &
21 Industries?

22 A No, not in wage and hour. Part of human resources.

23 Q When you were the employment standards program manager,
24 was that in the wage and hour division?

25 A Yes.

1 Q You moved to the internal investigator position because
2 the opportunity arose?

3 A Yes. I preferred it.

4 Q When you were in the employment standards program manager
5 position, were you familiar with the Department of Labor &
6 Industries' minimum wage and hour requirements for people in
7 state custody?

8 A Minimally.

9 Q Did you have a role with the enforcement of the Minimum
10 Wage Act?

11 A Yes, I was part of a team.

12 Q As part of that team, did you process Minimum Wage Act
13 complaints?

14 A No, I didn't process complaints. Are you talking about
15 when I was the manager?

16 Q What was your involvement when you were a manager with
17 complaints that were specific to the Minimum Wage Act?

18 A So as the manager, I primarily reviewed work that was done
19 by the field agents.

20 Q All right. Did you monitor what cases the field agents
21 got involved in?

22 A Just some of them. If they had determined that there was
23 what was called an NOA, a notice of assessment, those types
24 of things would come across my desk to review and look at
25 those cases and make sure that a notice of assessment would

1 be appropriate for an employer. That kind of a determination
2 was made when an employer owed wages for work that had been
3 done by their employees. That was my primary job.

4 Q Are you familiar enough with the Minimum Wage Act because
5 of your experience with working in the division that you
6 worked in, employment standards, that there is an exception
7 to the definition of "employee" for individuals in state
8 custody?

9 A Not anymore. I haven't done that work for quite a long
10 time.

11 Q As you sit here today, you have no recollection as to
12 whether or not people in state custody are exempt from the
13 Minimum Wage Act?

14 A You know, I am not that familiar with the laws or the
15 rules anymore. It has been several years since I have worked
16 in that program. I would hate to try to quote something that
17 I am just really not very familiar with anymore.

18 Q I wasn't asking you to quote it. Do you need to take a
19 look at the statute to refresh your recollection? Would that
20 help?

21 A I don't have one handy.

22 Q Well, I do. I am going to try to pull one up here on the
23 screen for you.

24 MS. CHIEN: We object to this being published again.
25 Same issue with the law being published.

1 THE COURT: Yes, the objection is sustained.

2 MS. CHIEN: I can check with support staff to see if
3 Ms. Buchanan has access to Box, if that is what your
4 preference would be, Ms. Mell?

5 MS. MELL: Same statute. It is still in there.

6 MS. CHIEN: Ms. Buchanan, we are going to send you a
7 link to box.com where the exhibits are going to be pulled up.
8 I don't remember what exhibit number this is, Ms. Mell?

9 THE WITNESS: Are you sending it by email?

10 MS. CHIEN: We are going to send it via email. Is
11 that okay?

12 THE WITNESS: Yeah, let me switch over to that. I am
13 looking at my emails, but I am not seeing it.

14 MS. CHIEN: We are going to send it to you in one
15 second.

16 THE WITNESS: RCW 49.46.010. Which part of this?

17 BY MS. MELL:

18 Q See where it defines "employee"?

19 A Yes.

20 Q "Includes any individual employed by an employer but shall
21 not include..."

22 A Yes, I see that.

23 Q Do you see there is an exception listed, subsection (k),
24 "Any resident, inmate or patient of a state, county or
25 municipal correctional, detention, treatment or

1 rehabilitative institution"?

2 A Let me get down to that. Any resident, inmate, yes, I see
3 that.

4 Q Does that refresh your recollection as to individuals in
5 state custody being exempt from the Minimum Wage Act?

6 A Well, I know what it means, but it is not --

7 Q What does it mean?

8 A Well, it sounds like it means that they would not be
9 included as an employee.

10 Q In your -- let's get more specific about your time as
11 employment standards program manager. How many years were
12 you doing that work?

13 A Not very long. Couple years.

14 Q How much experience do you have with the Minimum Wage Act?

15 A I started with Labor & Industries in 2008. I worked with
16 the Minimum Wage Act as an industrial relations agent and
17 just promoted up from there.

18 Q So when you were doing that work specific to the Minimum
19 Wage Act, did you have specific rules that interpreted that
20 statute that you applied in your position?

21 A Yes.

22 Q Did you have a definition for who L&I considered a
23 resident of a state, county or municipal correctional,
24 detention, treatment, or rehabilitative institution?

25 A You know, those kinds of things didn't come up very often.

1 I mean, there is tons of rules for everything at Labor &
2 Industries. Primarily, everyone that we received a wage
3 complaint from was considered an employee and they were a
4 resident of Washington. We had very few cases that I recall
5 that came in outside of that parameter.

6 Q Is it your position the Department did not need to define
7 who was a resident of a state, county or municipal
8 correctional, detention or treatment or rehabilitative
9 institution to know how to apply the exception?

10 MR. BERGER: Objection to form. Foundation.

11 MS. CHIEN: Objection.

12 THE COURT: The objection is sustained as to her
13 position.

14 BY MS. MELL:

15 Q Did L&I not define who was a resident of a state, county
16 or municipal correctional detention, treatment or
17 rehabilitative institution because it didn't need one?

18 MS. CHIEN: Objection, foundation.

19 THE COURT: Sustained.

20 BY MS. MELL:

21 Q Did L&I define who it considered an inmate of a state,
22 county or municipal correctional, detention, treatment or
23 rehabilitative institution?

24 MS. CHIEN: Same objection.

25 THE COURT: She may answer if she knows.

1 THE WITNESS: You know, I think the 49.46.010, as it
2 defines who is an employee and who is not an employee, that's
3 what was followed. That's not necessarily an L&I rule. It
4 is a rule that is looked at by people in the wage and hour
5 program. L&I didn't write this. It is a rule that, of
6 course, people know about, and even though we didn't use any
7 kind of -- we didn't see people that were incarcerated filing
8 wage complaints on a frequent basis, and so that kind of
9 thing just never came up very often.

10 BY MS. MELL:

11 Q Did it even come up at all?

12 A I don't remember if it ever did.

13 Q Is it your recollection that it did not?

14 A I don't recall that it did. I can't say that it never
15 did. You know, honestly, it has been a really long time
16 since I worked in that program. I just don't -- I don't
17 remember all of the cases that came up.

18 Q Is it correct, then, that similarly L&I never previously
19 defined who it considered a patient of a state, county or
20 municipal correctional, detention, treatment or
21 rehabilitative institution?

22 MS. CHIEN: Objection, foundation.

23 THE COURT: The objection is sustained.

24 BY MS. MELL:

25 Q As -- in your work in enforcing the Minimum Wage Act, did

1 you have a pretty good sense of who the people were that were
2 exempt under that provision without defining them more
3 specifically?

4 A The people we typically would see that were exempt were
5 independent contractors. They were not considered employees.
6 That's what we saw more than any other that I can remember.

7 Q There was a rule that you developed specifically to try to
8 discern who was an independent contractor versus who was an
9 employee, correct?

10 A I'm sorry. I don't remember that.

11 Q Do you remember the economic realities test?

12 A I know those words, but I couldn't describe it to you. It
13 is complicated. I know that.

14 Q Do you know it was so complicated you guys created a
15 formula to deal with that situation that was call --

16 MS. CHIEN: Objection.

17 BY MS. MELL:

18 Q -- that was the economic realities test?

19 MS. CHIEN: Objection, calling for legal opinion.
20 Legal conclusion.

21 THE COURT: The objection is sustained to the form of
22 the question.

23 BY MS. MELL:

24 Q The economic realities test was a criteria you used to
25 discern the difference between an independent contractor and

1 an employee, correct?

2 A Yes.

3 Q And you developed an economic realities test so you could
4 investigate wage and hour complaints involving the difference
5 between an independent contractor and an employee, correct?

6 MS. CHIEN: Objection, foundation. Ms. Mell is
7 trying to -- misstating the law and trying to get it in
8 through a witness.

9 THE COURT: The question assumes facts not in
10 evidence.

11 BY MS. MELL:

12 Q Did you use the economic realities test when you were at
13 the Department?

14 A I am assuming that I did.

15 Q Did you ever use it in the context of somebody in state
16 confinement?

17 A I don't remember if I did or not.

18 Q Did you ever use that test and apply it to anyone at the
19 Northwest ICE Processing Center?

20 A That name doesn't sound familiar to me.

21 Q Does the name "GEO" sound familiar to you?

22 A I don't know what that is.

23 Q Does L&I know there are people in custody in local jails?

24 A Yes.

25 Q L&I does inspections in local jails, correct?

1 A I don't know. I am not involved with inspections.

2 Q With regard to local jails, L&I knows the Minimum Wage Act
3 doesn't apply to any of those individuals in the local jail
4 preparing meals, correct?

5 A Preparing meals? I don't know.

6 Q How about cleaning the toilets? Trustees in the local
7 jails who clean toilets in the local jails aren't covered by
8 the Minimum Wage Act?

9 MS. CHIEN: Objection.

10 THE COURT: Sustained.

11 BY MS. MELL:

12 Q Have you ever processed a complaint by an inmate in the
13 local jail where they wanted minimum wages for cleaning the
14 toilet?

15 A I don't think so.

16 Q Have you ever processed a complaint from an individual at
17 SCORE? Do you know what SCORE is?

18 MS. CHIEN: Objection.

19 THE COURT: That's two questions.

20 MS. MELL: It is.

21 BY MS. MELL:

22 Q Do you know what SCORE is?

23 A No.

24 Q Do you know there is a regional jail in South King County?

25 MS. CHIEN: Objection. She just said she didn't

1 know.

2 THE COURT: This is a different question. She may
3 answer.

4 THE WITNESS: I am not aware of it.

5 BY MS. MELL:

6 Q Has L&I put any resources into ensuring that people
7 detained in jail doing work like cleaning the toilets or
8 preparing food get paid minimum wage?

9 MR. BERGER: Objection, foundation.

10 THE COURT: I think she may answer if she knows.

11 THE WITNESS: I'm sorry, I don't know.

12 BY MS. MELL:

13 Q Were you ever involved -- did you ever allocate any of
14 your time to that issue?

15 A I don't recall doing that. No.

16 Q Do you ever recall allocating any of your time to
17 ascertaining whether or not the detainees at the Northwest
18 ICE Processing Center are covered by the Minimum Wage Act?

19 A Not that I can remember. I haven't been in that program
20 for at least seven years. A lot of it, I just don't know. I
21 just don't remember. I don't know how things have changed
22 since I have been there. It is not even on the same floor
23 anymore.

24 Q Are you glad to be gone off that floor?

25 A Yes.

1 Q All right. Exhibit A-109, I would like to have you take a
2 look at, if you can. It is probably something you have to
3 pull off your email.

4 THE WITNESS: Is it in the same email?

5 MS. CHIEN: We'll have to email it to you. What was
6 the number, counsel?

7 MS. MELL: A-109.

8 MS. CHIEN: I note this is an excluded exhibit.

9 THE COURT: Yes, I see that.

10 BY MS. MELL:

11 Q Have you ever had an opportunity to review Exhibit A-109.

12 MS. CHIEN: We have to email it, Ms. Mell.

13 Ms. Buchanan, I think we might have sent it. You might want
14 to check your email.

15 THE WITNESS: Here, we just got it. Okay.

16 MS. CHIEN: Sorry. It is the wrong one. One second.
17 It would be helpful if we can get them in a batch.

18 MS. MELL: Add A-107 and A-116. That would be
19 helpful. Thank you.

20 MS. CHIEN: All right. We can start with A-109 for
21 now. We will get the others.

22 MS. MELL: Yep, we can do that.

23 BY MS. MELL:

24 Q Exhibit A-109, what is that?

25 A I can't see it yet because we have a block on our

1 computers. Hopefully it brings up a preview and lets me look
2 at it. Right now --

3 MS. CHIEN: We would object to Ms. Mell asking
4 Ms. Buchanan to identify an exhibit that's been excluded.

5 THE COURT: Did I already specifically rule on this
6 exhibit?

7 MS. CHIEN: Yes.

8 MS. MELL: Your Honor, your ruling was always subject
9 to what happens at trial, and refreshing the witness's
10 recollection is laying a foundation as to the question that
11 you did not exclude me from asking.

12 THE COURT: Well, you can ask her to review the
13 exhibit, but don't show it to anybody. We will see if it is
14 offered and admitted or whatever. For now, she can look at
15 it, if that's the question. What is your question?

16 BY MS. MELL:

17 Q What is it?

18 MS. CHIEN: Objection. Objection, Your Honor. This
19 is an excluded exhibit. Her identifying an excluded exhibit,
20 we think goes against the Court's previous order. We are
21 happy to have her review Exhibit 109. We don't believe it
22 should be identified.

23 THE WITNESS: Unfortunately, I am not able to review
24 it.

25 THE COURT: Well, there you go. What is the next

1 question?

2 MS. MELL: I guess I want to make a record that I am
3 not going to be permitted to show the exhibit to the witness
4 and use it to refresh her recollection because she can't get
5 the exhibit in the manner in which I was asked to deliver it
6 to her. Do we have a workaround here where somebody could
7 give it to her?

8 MS. CHIEN: Ms. Buchanan is not in our office.

9 MS. MELL: She's in Department of Labor & Industries.
10 Can somebody hand her the exhibit?

11 THE WITNESS: I am not in the Department of Labor &
12 Industries. I am working from home in Spokane.

13 MS. CHIEN: Ms. Buchanan, just so I understand, are
14 you unable to open the attachment? Is that's what is going
15 on?

16 THE WITNESS: That is correct. We have advanced
17 threat protection and it won't open. It is an outside
18 attachment. I was hoping to see a preview of it, but I can't
19 get it to even show me that.

20 THE COURT: Okay. We are wasting time dealing with
21 this, counsel. The objection is fairly taken. Go on to
22 something else.

23 BY MS. MELL:

24 Q Did you, during your time with L&I when you were working
25 on the Minimum Wage Act, ever communicate to GEO that it

1 needed to comply with the Minimum Wage Act for its ICE work
2 program at the Northwest ICE Processing Center?

3 MS. CHIEN: Objection, foundation, relevance.

4 THE COURT: Sustained.

5 BY MS. MELL:

6 Q During your tenure with L&I when you were dealing with the
7 Minimum Wage Act, did L&I take an official position with
8 regard to the application of the Minimum Wage Act to the
9 detainees ICE held at the Northwest ICE Processing Center?

10 MS. CHIEN: Objection.

11 THE COURT: Sustained.

12 BY MS. MELL:

13 Q Did L&I make a determination in March of 2014 that L&I
14 had --

15 MS. CHIEN: Objection.

16 MR. BERGER: Objection.

17 THE COURT: The objection is sustained.

18 BY MS. MELL:

19 Q Did L&I enforce the Minimum Wage Act against the federal
20 government?

21 A We primarily dealt with state employees that were
22 considered to be employees through the Minimum Wage Act.
23 Federal issues were not part of our -- were not part of what
24 we did.

25 MS. MELL: I have nothing further, Your Honor.

1 THE COURT: Cross?

2 No further questions of this witness?

3 Thank you, Ms. Buchanan. You may be excused.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: You may call your next witness.

6 MS. MELL: I am. It is Ms. Sytsma, please.

7 MS. SCHEFFEY: Your Honor, are you anticipating an
8 afternoon break today?

9 THE COURT: Usually about 2:25.

10 MS. SCHEFFEY: I was wondering if it would make sense
11 to do this while we work out the logistics of this witness.

12 MS. CHIEN: Sorry. I missed --

13 THE COURT: Is it going to take some time to get the
14 witness up?

15 MS. CHIEN: Might take like two minutes or so. I am
16 not sure --

17 THE COURT: Oh, well.

18 MS. SCHEFFEY: Ms. Chien, we also had documents
19 couriered to your office. Paper copies.

20 MS. CHIEN: We might have to double check that.

21 THE CLERK: The witness has just arrived. She's
22 being admitted at the moment.

23 THE COURT: Okay.

24 MS. CHIEN: Let me check -- a courier came?

25 MS. SCHEFFEY: They delivered hard copies. If not,

1 they are in the Box.

2 MS. CHIEN: Yes, it is confirmed. She has whatever
3 you couriered over.

4 THE COURT: Ms. Sytsma, if you would raise your right
5 hand and be sworn.

6 SARAH SYTSMA,
7 having been sworn under oath, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. SCHEFFEY:

10 Q Good afternoon. Can you see and hear me okay?

11 A I can.

12 Q Could you state your name for the record. I want to make
13 sure I am saying it right.

14 A Sarah Sytsma.

15 Q You work for Washington Department of Corrections, right?

16 A Correct.

17 Q In 2019, you were named the Director of Correctional
18 Industries, correct?

19 A Yes.

20 Q You have over 25 years of experience in corrections?

21 A 20 years.

22 Q The Department of Corrections is required to provide safe
23 and secure housing for those that are detained, correct?

24 A Correct.

25 Q It houses both individuals held on detainer after they

1 served their sentence and also those convicted of crimes,
2 correct?

3 A I know those convicted of crimes.

4 Q We will get to the next one afterward. Correctional
5 Industries describes itself as a unique blend of business and
6 government?

7 A Yes.

8 Q In Correctional Industries, those who are detained across
9 the State of Washington work in various facilities, right?

10 A Yes.

11 Q You would agree those programs and other work programs
12 that allow detained individuals to stay busy are beneficial
13 to those people who are confined, correct?

14 A Correct.

15 Q In your over 20 years of experience, are you aware of any
16 detention facility in the State of Washington that does not
17 provide the opportunity for detained individuals to stay
18 busy?

19 A Not within our DOC facilities.

20 Q In the State of Washington, detained individuals can
21 participate in a class of worker called Class II work,
22 correct?

23 A Yes, our incarcerated individuals, CI oversees Class II
24 programs.

25 Q That work involves producing goods and services that are

1 sold to generate funds for Correctional Industries, right?

2 A Many of the programs, yes.

3 Q Those who perform that work while detained are not paid
4 minimum wages, correct?

5 A Currently, that is correct.

6 Q There are also Class III positions, right?

7 A Yes.

8 Q People who participate in Class III positions complete
9 tasks inside the facility where they are detained, right?

10 A Yes.

11 Q They help with food service?

12 A There are some Class III positions, correct.

13 Q They help with the laundry?

14 A Class II.

15 Q Class II. What about maintenance, they help with
16 maintenance?

17 A Maintenance is Class II -- excuse me, Class III.

18 Q Class III. They clean their cells and common areas; is
19 that right?

20 A Yeah, Class III -- in our Class II programs we do have --
21 part of their day may be cleaning up before the end of the
22 day.

23 Q They clean bathrooms that are used by many people who they
24 live with, right?

25 A That's mainly a Class III, although there are some Class

1 II programs that may clean restrooms. In Class II, it
2 wouldn't be restrooms of the incarcerated.

3 Q In Class III, it would be restrooms of the detained
4 people, correct?

5 A Yes.

6 MS. CHIEN: For clarity, it is not "detained." It is
7 not "detainees."

8 MS. SCHEFFEY: Marsha, I don't think you are
9 testifying right now. I don't think you should instruct the
10 witness.

11 MS. CHIEN: I am trying to clarify your language.

12 MS. SCHEFFEY: I don't think it is proper.

13 May I proceed, Your Honor?

14 THE COURT: I am waiting for you.

15 BY MS. SCHEFFEY:

16 Q Those people in Class III, they clean the showers that are
17 used by other people who they live with?

18 A Correct. I want to clarify, I do not oversee Class III
19 programs. I would only be speculating.

20 Q Okay. What about Class II, do they clean showers?

21 A No.

22 Q Do prisoners serving life without parole participate in
23 work programs in the State of Washington?

24 A Within a CI program, we do have some LWOP incarcerated in
25 the program.

1 Q Those people participate in the work programs even though
2 they have no chance of release, correct?

3 A Correct. Some.

4 Q None of those individuals receive minimum wages for their
5 participation, correct?

6 A Correct.

7 Q So you would agree that detainees who work in Class II and
8 Class III work at Washington State prisons for subminimum
9 wages, correct?

10 A Our incarcerated work for a gratuity.

11 Q I know you stated that you -- just now that you had no
12 knowledge of Class III positions. Do you recall giving a
13 deposition in this case?

14 A I do.

15 Q Do you have a copy of that in front of you, by any chance?

16 A There is a packet in front of me.

17 Q You can open that, if you want. I am going to have you --
18 I know I was asking you about your deposition. Now that I am
19 seeing the packet, I will have you shift gears. Can you find
20 Exhibit A-25? Might be A-025.

21 A A-025?

22 Q Yes.

23 A I see A-023.

24 Q There should also be A-025. I don't know --

25 MS. CHIEN: Sorry. Can I clarify with staff?

1 MS. SCHEFFEY: If not, Marsha, could you get her a
2 copy of A-025 printed?

3 MS. CHIEN: Can we have a staff go in there and help
4 her look for it. Was it in the courier packet --

5 MS. SCHEFFEY: It should have been. I am going to
6 admit I did not put it together myself. It was on the list.

7 THE COURT: It is time for a break. We will take ten
8 or 15 minutes, folks. You may be excused. You can get your
9 exhibit business together during the break, hopefully.

10 MS. SCHEFFEY: Thank you.

11 (Recessed.)

12 (The following occurred outside the presence of the jury.)

13 MS. CHIEN: Counsel, we just gave Ms. Sytsma all of
14 the exhibits in binder form. We still haven't gotten the
15 return courier thing, just FYI.

16 THE COURT: Are we ready to proceed?

17 MS. CHIEN: We seem to have a fire alarm.

18 THE COURT: We are not having any more fires today.

19 MS. CHIEN: Sorry. One second. I think we have
20 gotten a pass from this.

21 THE COURT: Are we ready for the jury? You can bring
22 the jury in. The witness is present.

23 (The following occurred in the presence of the jury.)

24 THE COURT: One of the bad things about the system is
25 your positions on my screen keep changing. As part of the

1 Zoom platform, I had hoped as time goes on everybody would
2 stay in the same block on the screen so we can keep track of
3 each other better.

4 All right. You may continue, Ms. Scheffey.

5 MS. SCHEFFEY: Thank you, Your Honor.

6 BY MS. SCHEFFEY:

7 Q Do you have Exhibit A-025 in front of you?

8 A Yes.

9 Q State of Washington Department of Corrections?

10 A Yes.

11 Q Do you recognize this type of document?

12 A I do.

13 Q Is this maintained by Department of Corrections?

14 A Yes.

15 Q Is it regularly updated?

16 A They are. This last one -- this is actually an old
17 version. There was an update in 2019. A next update in
18 2022.

19 MS. SCHEFFEY: I would offer this exhibit into
20 evidence.

21 MS. CHIEN: No objection.

22 MR. BERGER: No objection.

23 THE COURT: All right. It may be admitted.

24 (Exhibit A-025 was admitted.)

25

1 BY MS. SCHEFFEY:

2 Q What is this document?

3 A This is policy 710-400. It is Correctional Industries and
4 it is over Class II employment.

5 Q I would like to go to the second page marked WA00011236.
6 Do you see where it says "policy" at the top?

7 A I do.

8 Q Section 3, it states that Class II employment is voluntary
9 for offenders; is that correct?

10 A Correct.

11 Q Is that still the policy for Class II employment?

12 A Yes.

13 Q Class II employment is available to anyone who is detained
14 within Department of Corrections system; is that accurate?

15 A Yes, if they meet certain qualifications.

16 Q If we keep going to the page marked -- it is the third
17 page, I believe, of the document, Bates No. WA00011237. Do
18 you see that?

19 A Yes.

20 Q In the middle it says "industry responsibility." Do you
21 see that section?

22 A I do.

23 Q It states that each Class II business will maintain
24 written job descriptions; is that accurate?

25 A Yes.

1 Q Is that still the policy for Class II employment?

2 A Yes.

3 Q For detainees who participate in Class II programs, they
4 receive a written job description before they participate?

5 A So, again, you are referring to them as "detainees." Our
6 language is "incarcerated individuals." I don't believe they
7 are each provided a position description. It is not handed
8 to them. They can obtain that information with their
9 correctional counselors.

10 Q I think you just made a distinction between the language I
11 am using and what you use. You used "incarcerated
12 individuals"?

13 A Yes.

14 Q Are those individuals who are held under the authority of
15 the State of Washington?

16 A Yes.

17 Q Are they free to come and go from the facilities where
18 they are held?

19 A No, they are not.

20 Q They are confined to the location where the State of
21 Washington sends them; is that correct?

22 A Correct.

23 Q I would like you to turn to, I guess it is Page
24 WA00011239. It should be the fifth page of that document.
25 There is a Section C, which starts with "each CI class

1 business will establish a fair recruitment and hiring
2 process." Do you see that?

3 A I do.

4 Q Is it accurate that individuals that want to participate
5 in Class II opportunities have to interview before they do
6 so?

7 A Yes, they do.

8 Q If they want to work, they have to do a skills assessment;
9 is that correct?

10 A Yeah, they fill out an application.

11 Q They have to establish that they have prior experience; is
12 that accurate?

13 A Yeah. Yes, for some of our positions. We really -- we do
14 have a requirement that they have to have a high school
15 diploma or GED. If they don't, at least be working on it
16 simultaneously.

17 Q I would like to go to the next page, which is WA000011243,
18 Section C that says "offender pay rates." You see that
19 section?

20 A I do.

21 Q As I read that, offenders are paid between 55 cents and a
22 1.60 per hour for participating in the program?

23 A That has been updated in the new policy.

24 Q When was the new policy enacted?

25 A In 2019.

1 Q What is the amount now?

2 A It went up ten cents, 65 cents to 1.70.

3 Q This document was updated in 2014, correct?

4 A This was updated -- the one I am looking at was 2014. We
5 have a more current of 2019.

6 Q From 2014 to 2019, were the numbers you see on the screen
7 accurate?

8 A I know when I came into my position we were paying the
9 probation rate at 65 cents per hour in 2019.

10 Q The current rate is still less than minimum wage, correct?

11 A Correct. The current rate for Class II starts out at 65
12 cents an hour up to 1.70.

13 Q I believe you testified earlier that some Class II
14 employment is in laundry rooms; is that correct?

15 A That's correct. All of laundry is Class II.

16 Q Sorry. What was the end of that answer?

17 A All laundry is managed by CI and Class II.

18 Q Class II work that is paid at 65 cents an hour; is that
19 correct?

20 A 65 up to 1.70.

21 Q You also testified earlier that Class II work involves
22 food services; is that accurate?

23 A It does involve food service.

24 Q The food service work involves helping prepare meals in an
25 industrial kitchen; is that accurate?

1 A Yes.

2 Q That work is also compensated between 65 cents and 1.75 an
3 hour?

4 A Correct.

5 Q I would like you to take a look at Exhibit A-031. My tech
6 team can take the other one down. Do you have it in front of
7 you now?

8 A I do.

9 Q Do you recognize this document?

10 A No. I recognize that it is a policy.

11 Q Is this a policy maintained by Department of Corrections?

12 A Yes.

13 Q Does it look like the last policy you looked at?

14 A This is the -- looking at the title, this is Class III
15 offender employment.

16 Q Is this the type of policy that is typically maintained by
17 Department of Corrections?

18 A Yes. It is the template of our policies, yes.

19 Q It is signed that it is approved here on the front page;
20 is that correct?

21 A Correct.

22 MS. SCHEFFEY: Offer to admit Exhibit A-031.

23 MS. CHIEN: We object. Ms. Sytsma only knows Class I
24 and II, that's what she testified to. She doesn't recognize
25 this policy.

1 MS. SCHEFFEY: She testified it is the type of policy
2 maintained by the DOC, regularly updated and it is signed.

3 MS. CHIEN: Recognizes the format.

4 THE COURT: Do you have some serious objection that
5 that is not what it purports to be?

6 MS. CHIEN: No, this isn't the witness --

7 THE COURT: A-31 may be admitted.

8 (Exhibit A-31 was admitted.)

9 BY MS. SCHEFFEY:

10 Q So as part of your job in the Department of Corrections
11 overseeing Class II workers, you have knowledge about Class
12 III workers and Class I workers; is that correct?

13 A I have knowledge about Class I and Class II workers. CI
14 does not have oversight of Class III workers.

15 Q Although you don't have oversight over them, you
16 understand the differences between the different classes; is
17 that correct?

18 A I have some knowledge of the differences.

19 Q One of those differences is the rate of pay; is that
20 correct?

21 A That's correct.

22 Q Class III workers -- if we can turn to Page WA00011101.
23 It is true Class III workers do not qualify for an amount in
24 excess of \$55 a month as a stipend; is that correct?

25 A Yeah, that's what I am reading, yes.

1 Q And they -- Class II workers cannot earn more than \$55 per
2 month even if they work over 40 hours each week; is that
3 correct?

4 MR. BERGER: Objection, I believe you meant to refer
5 to Class III.

6 MS. SCHEFFEY: Yes. Sorry. Class III workers.

7 THE WITNESS: Can you repeat the question?

8 BY MS. SCHEFFEY:

9 Q Class III workers can't make more than \$55 a month even if
10 they work over 40 hours a week; is that correct?

11 MS. CHIEN: Objection, foundation.

12 THE COURT: The exhibit is in evidence. If she's
13 just reading the exhibit, the objection is sustained. If she
14 has some personal knowledge, she can answer the question.

15 THE WITNESS: I have no personal knowledge.

16 BY MS. SCHEFFEY:

17 Q We can take that down. The Class II workers get overtime?

18 A Yes.

19 Q How much is their overtime?

20 A Time and a half.

21 Q So --

22 A Over 40 hours.

23 Q For someone who is working over 40 hours a week, for every
24 hour over 40 hours, they get about \$3; is that accurate?

25 A Depending on which level they are at, they could.

1 Q They are not going to get more than \$3 an hour?

2 A Time and a half.

3 Q I understand math. I am not trying to do it exactly
4 either.

5 Can detainees be terminated from the correctional
6 industry program?

7 A Incarcerated workers can be terminated.

8 Q For what reasons?

9 A They could be terminated for infractions.

10 Q When you say "infractions," what does that mean?

11 A Infractions ranging from anything -- they could be
12 infracted from theft from our own program to drug
13 infractions. Any type of infraction they receive from the
14 facility.

15 Q What about for not following an officer's orders?

16 A I mean, so when they receive infractions, it really is
17 dependent on what the infraction is for. We look at all of
18 them, each of them. I can't specifically answer yes or no.
19 We would have to look at the infraction.

20 Q Is there a safety and security reason offenders would need
21 to be terminated for inappropriate behavior such as stealing?

22 A There could be.

23 Q What kind of reason?

24 A If it is theft, I mean in our program, we are teaching
25 skills -- soft skills are just as equally important as

1 technical skills. If it is theft, well, theft would be a
2 security issue. Definitely depending on what they may be
3 stealing, it could be used for strong arm or anything back in
4 their unit.

5 Q Thank you. Could you turn to Exhibit 22.

6 MS. CHIEN: A-22?

7 MS. SCHEFFEY: A-22. My fault.

8 BY MS. SCHEFFEY:

9 Q Do you have it in front of you?

10 A I do.

11 Q Do you recognize this document?

12 A I have not personally seen this document.

13 Q Have you seen any -- is there a document you give to
14 incarcerated individuals which gives them orientation on the
15 system?

16 A Not that CI does.

17 Q Does the Department of Corrections give it?

18 A I believe they do.

19 Q You have 20 years of experience in Department of
20 Corrections, right?

21 A Yes, I do.

22 Q Are you aware the Department of Corrections gives a
23 state-wide inmate orientation handbook?

24 A Yeah, I know they give one out. I have not looked at
25 this.

1 Q You have not looked at this. Does -- do you have any
2 reason to believe this is not the Department of Corrections
3 state-wide orientation handbook?

4 A No, I have no reason not to believe that.

5 Q Does this appear to be a regularly maintained Department
6 of Corrections orientation handbook?

7 A Not seeing one, I would believe so.

8 MS. SCHEFFEY: I offer to admit this in evidence.

9 MS. CHIEN: We object. The witness doesn't recognize
10 this document.

11 THE COURT: It is not sufficiently identified at this
12 point.

13 BY MS. SCHEFFEY:

14 Q One of the goals of corrections is to allow inmates to
15 live in a safe and secure facility, correct?

16 A Correct.

17 Q Do you agree audits help achieve this goal?

18 A I would imagine.

19 Q If the orientation handbook said audits help achieve that
20 goal, would you have any reason to doubt that?

21 MR. BERGER: Objection to form.

22 THE COURT: The objection is sustained.

23 BY MS. SCHEFFEY:

24 Q Is it important in your position for facility operations
25 to be consistent throughout Department of Corrections?

1 A Facility operations?

2 Q Yes. Why don't I rephrase my question. Is it important
3 for you that everyone who participates in the Correctional
4 Industries program has the same opportunities regardless of
5 which state facility where they are held?

6 A Yeah.

7 Q Uniformity in applying those rules for Correctional
8 Industries is important; is that correct?

9 A It is correct.

10 Q That would also go to the pay rates of those individuals
11 who participate in Correctional Industries, you would want
12 those to be uniform regardless of where someone is held,
13 correct?

14 A I want uniformity within CI.

15 Q CI serves something like 20 or more different institutions
16 across the state, correct?

17 A 12.

18 Q 12. Okay. Among those 12 institutions that you serve,
19 you would want every inmate in any of those facilities to
20 have the same opportunity to earn that rate of pay, correct?

21 A I would want Class II industries that I oversee to be
22 consistent within their levels of pay, that is correct.

23 Q When you say you want Class II, there are Class II inmates
24 at more than one institution across the state, correct?

25 A We have Correctional Industries operations in 11 of our

1 facilities. I would want them to all be consistent.

2 Q What 11 facilities are those?

3 A We have the Washington State Penitentiary, the Coyote
4 Ridge, Airway Heights Corrections Center, Clallam Bay
5 Corrections Center, Stafford Creek Corrections Center,
6 Washington Corrections Center, Washington Corrections Center
7 for Women, Monroe Correctional Complex, Larch Corrections
8 Center, Olympic Corrections Center and Mission Creek
9 Corrections Center for Women.

10 Q You mentioned Airway Heights Correction Center; is that
11 right?

12 A I did.

13 Q Can you look at Exhibit A-128?

14 A 128?

15 Q Yes. Is this an Airway Heights Correction Center offender
16 job description?

17 A That's what it says at the top, "offender job
18 responsibilities."

19 Q Does this look like a job description maintained by Airway
20 Heights for Class II industries?

21 A This does not look like a Class II. I am looking at the
22 position, the position on it. Hobby craft.

23 Q Why does it not look like a Class II job description?

24 A Hobby craft is not something that Class II oversees.

25 Q Who would oversee that?

1 A I believe Class III. I believe that would be a prisons
2 job.

3 Q So you do have an idea of the distinction between
4 Correctional Industry jobs and Class III?

5 A I do. I know what jobs fall in Class II.

6 Q Tell me what jobs fall in Class III or that you would know
7 would not be a Class II job description so I can know what
8 types of jobs.

9 A I can't -- for Class III, I wouldn't be able to answer
10 that.

11 Q How do you know the thing you are looking at is not a
12 Class III job?

13 A I know hobby craft equipment room worker is not a position
14 within Class II that I oversee.

15 Q If this was an older document, would you have any
16 knowledge, before your time in 2019, Class II positions?

17 A If this was before my time in '19, that is correct, I
18 wouldn't know.

19 Q Let's see if we can figure out what the jobs are in Class
20 II. Can you try looking at Exhibit 152.

21 MR. BERGER: A-152?

22 MS. SCHEFFEY: Sorry. A-152.

23 A I see it.

24 Q Does this look like a job description for a Class II
25 worker?

1 A No.

2 Q Why not?

3 A We don't supervise janitors, yeah. We don't have floor
4 and dayroom janitors.

5 Q Do you know if there are inmates incarcerated within the
6 DOC that perform dayroom janitor positions?

7 A I don't believe -- no. For Class II? Sorry.

8 Q No, just within the Department of Corrections. Have you
9 visited any of the facilities in Department of Corrections?

10 A I have.

11 Q Have you observed people working in those facilities?

12 A I have.

13 Q Do you know if any of the people who work in those
14 facilities perform janitor duties, sweeping, mopping the
15 floor, wiping the tables?

16 A They do.

17 Q You know that is a job. Next question, is that job Class
18 II or Class III?

19 A Class III.

20 Q I think you testified earlier Class III does not pay
21 minimum wage, correct?

22 A Correct.

23 Q Let's see if I can find a Class II exhibit in here. Can
24 you look at A-129?

25 A I am looking at 129.

1 Q Have you seen a document like this before?

2 A Is it the document that says "mandatory waiting list"?

3 Q Yes.

4 A I have not seen that document.

5 Q Is this a mandatory waiting list for the Class II
6 positions?

7 A There is a volunteer waiting list.

8 Q Tell me about the volunteer waiting list for Class II
9 positions?

10 A When our incarcerated go through the screening process
11 applying for jobs, there are waiting lists created by their
12 counselor. They are able to go in and pull names from the
13 waiting lists.

14 Q Do you pull names in order or do you pull based on who you
15 prefer?

16 A I can't answer that. I have general managers at each site
17 that work with those waiting lists. I am not specific on the
18 process.

19 Q Is it typical that there is a waiting list for Class II
20 positions?

21 A For some positions, not all. Our goal would be a waiting
22 list.

23 Q Why would your goal be a waiting list?

24 A So we know people are wanting to sign up for programs and
25 so we can plan accordingly.

1 Q Why do you want to have people interested in signing up
2 for the programs?

3 A Because we believe our program makes a difference within
4 reentry. We are excited to get our incarcerated in there and
5 start working on programming, technical and soft skills to
6 prepare them for release.

7 Q You also allow people who have life without parole to
8 participate in the programs?

9 A Yes, there are some.

10 Q Do you believe it has a benefit for those people?

11 A I do.

12 Q What is that benefit?

13 A If we can get some individuals who are at the facilities
14 for a long time that, A, it helps mentor. They can help
15 mentor the others who are getting out. We look at -- it
16 gives them a benefit of being able to learn skills. Helps
17 with idleness. We are looking at them to help mentor others
18 that come into our program.

19 Q I understand the benefit to the State of having workers
20 who are experienced and aren't going to leave. What is the
21 benefit to the incarcerated person who is not going to be
22 able to reenter society?

23 A It gives them a sense of accomplishment. It gives them a
24 sense of doing good things. They are able to keep busy.
25 They are able to earn a gratuity. There is things that they

1 need gratuity for. If they want to purchase from commissary
2 and things of that nature.

3 Q When you say "gratuity," do you mean a payment?

4 A Yeah, that's the pay scale, gratuity scale. Their hourly,
5 what we pay them hourly.

6 Q You think those detainees get a sense of accomplishment
7 even if they are doing something like cleaning the toilets in
8 the bathroom?

9 MS. CHIEN: Objection.

10 THE COURT: You are asking for what many, many
11 hundreds of people think about something. I don't know how
12 this witness can answer that.

13 BY MS. SCHEFFEY:

14 Q Do you know about the mandatory deductions from Class II
15 worker pay?

16 A Yes, we have mandatory deductions.

17 Q Is it accurate to say those are the type of deductions
18 that may be taken from the amount they receive for
19 participating in work programs before they actually get that
20 payment; is that right?

21 A Yes.

22 Q Taken out kind of like taxes might be before I get my
23 paycheck, they are already taken out?

24 A Correct.

25 Q One of those is a cost of incarceration fee, correct?

1 A Yes.

2 Q What is that fee for?

3 A Covers cost of incarceration. I don't know the specifics.
4 It is the cost of incarcerating. I couldn't tell you the
5 specific breakdown of that.

6 Q Does that fee go back to the state?

7 A I don't know where the fee goes.

8 Q Does it go back to Correctional Industries?

9 A I don't know. I'm sorry. I don't know where the fee
10 actually goes.

11 Q Another deduction is the department debt, correct?

12 A I am not -- the fees, I don't know. I am not -- the
13 breakdown of the deductions, there is several deductions.
14 Child support, crime victim, mandatory savings account. I
15 can't name all the deductions.

16 Q Why don't you just take a look at Exhibit 22, Page
17 WA00011499 and see if that refreshes your recollection?

18 MS. CHIEN: A-22?

19 MS. SCHEFFEY: A-22. Sorry.

20 THE WITNESS: A-22. What is the number?

21 BY MS. SCHEFFEY:

22 Q 00011499.

23 MS. CHIEN: Your Honor, the witness didn't recognize
24 this document.

25 MS. SCHEFFEY: She has stated she knows --

1 THE COURT: What is the question to the witness?

2 MS. SCHEFFEY: Asking if it refreshes her
3 recollection. She stated she is aware of the mandatory
4 deductions taken out. I am asking her if this document helps
5 her remember.

6 THE COURT: She may answer that question.

7 THE WITNESS: WA000149, did you say 6?

8 MS. SCHEFFEY: 499. I just lost it. My PDF is
9 freezing up.

10 BY MS. SCHEFFEY:

11 Q WA00011528. It is the top number. Does this document
12 refresh your recollection about the types of mandatory
13 deductions?

14 A I do see the deductions on here.

15 Q Does it help you remember the different types?

16 A Well, I have read this several times in the statute, so
17 yes.

18 Q Is one of those deductions a department debt?

19 A Yes.

20 Q The department debt deduction allows the Department of
21 Corrections to take out funds for detainees' medical and
22 dental services, correct?

23 A That's what shows on here, yes.

24 Q Also what it says in the statute you said you read?

25 A I don't recollect.

1 Q Do you have any reason to believe that is not accurate?

2 A No, I don't have any reason not to believe.

3 Q Also allows the Department of Corrections to take out
4 money for hygiene supplies such as soap and shampoo, correct?

5 A Yes, that's what it says on here.

6 Q Those deductions are intended to offset the cost of
7 housing individuals to the taxpayers, right?

8 MS. CHIEN: Objection.

9 THE COURT: Objection is sustained. Intended by
10 whom?

11 BY MS. SCHEFFEY:

12 Q Does Correctional Industries have a purpose of offsetting
13 some of the cost of incarceration to taxpayers?

14 A To reduce the burden to taxpayers.

15 Q If Correctional Industries does not recoup those debts,
16 ultimately the cost falls on the taxpayer, right?

17 A Can you --

18 MS. CHIEN: Objection, foundation.

19 MS. SCHEFFEY: I will rephrase.

20 BY MS. SCHEFFEY:

21 Q If Correctional Industries doesn't meet its goal to reduce
22 the burden on the taxpayer, the cost of incarceration is
23 borne by taxpayers in Washington, correct?

24 MS. CHIEN: Objection, foundation.

25 THE COURT: Sustained.

1 MS. SCHEFFEY: She's the Director of Correctional
2 Industries. She said this is their stated goal.

3 THE COURT: I know what she is.

4 BY MS. SCHEFFEY:

5 Q Will you turn to Exhibit 54 in your packet?

6 MS. CHIEN: A-54.

7 MS. SCHEFFEY: Exhibit A-54.

8 THE WITNESS: Okay.

9 BY MS. SCHEFFEY:

10 Q Do you know what this is?

11 A Yes, annual report.

12 Q What is it an annual report for?

13 A Correctional industries.

14 Q Are you the Director of Correctional Industries?

15 A I am.

16 Q Is this a report that Correctional Industries makes every
17 year?

18 A It is, yes.

19 MS. SCHEFFEY: Offer to admit Exhibit A-54.

20 MS. CHIEN: No objection.

21 MR. BERGER: No objection.

22 THE COURT: It may be admitted.

23 (Exhibit A-54 was admitted.)

24 BY MS. SCHEFFEY:

25 Q If you could turn to Page WA00010152. The second

1 paragraph right there, if we could blow it up, looks like
2 Correctional Industries ended with total sales -- I can
3 barely read it, \$114 million, a little over \$114 million at
4 the end of the year?

5 A That's what it says, yes.

6 Q Do you know what the annual sales were this year?

7 A We are just finishing up the year so I don't know yet.
8 No.

9 Q Were they significantly less than \$115 million?

10 A I am not sure yet.

11 Q What about last year in 2020?

12 A I believe they were less, but I did not refresh my memory
13 on that.

14 Q Is it typically in the hundred million dollar range?

15 A For sales? Yes.

16 Q Let's go to WA00010157. Are you there?

17 A I am, yes.

18 Q At the bottom that indicates the total assets at the end
19 of the year, total assets of Correctional Industries is \$55
20 million?

21 A Yes.

22 Q Is that somewhat similar to your total assets right now?

23 A It should be close to that. That's assets. So that would
24 be -- includes inventories and furniture, equipment, what you
25 see on the page.

1 Q Let's break that down. Inventories, when you talk about
2 inventories and furniture, furniture built by the Class II
3 workers?

4 A That could be part of the inventory. Raw material on hand
5 would be part of inventories. Items in process could be some
6 finished goods.

7 Q Raw materials at hand, are you buying furniture for
8 inmates to put together?

9 A We -- for raw materials we purchase steel, wood products.
10 There are some goods that are purchased. I couldn't tell you
11 off the top of my head for incarcerated to assemble.

12 Q All of that inventory would be put together by subminimum
13 wage work, correct?

14 A It would be. They would be paid the Class II gratuity
15 rate.

16 Q That's less than the minimum wage, correct?

17 A Correct.

18 Q What is the highest rate that is right now?

19 A In the facilities, it is \$1.10.

20 Q Can we go to WA00010163?

21 A Will you say that number again?

22 Q Yeah, I have to say it for myself, too. 00010163.

23 A I want to go back. I believe I misstated the amount.
24 They are paid up to \$1.70.

25 Q Thank you. This document says there are 25 Class II

1 programs. Earlier, you testified there is only 12?

2 A No, I said there were only 12 facilities.

3 Q Okay. 12 facilities, but some facilities have multiple
4 programs?

5 A Yes.

6 Q Across those 12 facilities, there is about 2,500 workers
7 that are incarcerated?

8 A That are working in Correctional Industries, we average
9 about 2,000 workers.

10 Q Those are incarcerated individuals, correct?

11 A Correct.

12 Q Overseeing them is about 430 staff?

13 A There were, but we had a significant layoff this year. We
14 have about 400 staff.

15 Q Why did you have a layoff?

16 A Our financials were -- our financials -- we are losing
17 money.

18 Q Did you lay off the Washington workers or did you lay off
19 the incarcerated workers?

20 A We did not lay off any incarcerated workers. We laid off
21 staff.

22 Q You kept all the incarcerated workers?

23 A Yes. The numbers have been different this last year due
24 to COVID. Not by -- well, by choice of COVID.

25 Q I think you testified that your assets remain about the

1 same as they were in 2017, correct?

2 A I believe. We are at the end of the year. I haven't seen
3 the numbers yet come out.

4 Q You still have about \$55 million in assets?

5 A Again, I would be making the assumption, as I have not
6 seen the financials for the end of the year yet this year.

7 Q I'm sorry. I see you looking a few different directions.
8 I want to make sure you are not receiving any communication.

9 A No, sorry. I am looking at this document.

10 Q That's fine. It is always unique during Zoom. I
11 appreciate it. While we are on this page, at the bottom, do
12 you see the average annualized cost of incarceration per
13 inmate?

14 A I do.

15 Q What is that amount?

16 A \$36,880.

17 Q Is that still the same amount today?

18 A I don't know.

19 Q If you could turn to the very next page. It is
20 WA00011528.

21 A 1528?

22 Q Yeah. In the middle, you'll see it says "McNeil Island
23 stewardship." Do you see that?

24 A Tell me again which page.

25 Q WA00010164. At the bottom, 1014.

1 A Okay.

2 Q 64 at the top. There is two Bates numbers. I apologize.

3 A McNeil Island stewardship. I see that.

4 Q McNeil Island is where the Special Commitment Center is;
5 is that correct?

6 A That's correct.

7 Q Those people are not criminally held, correct?

8 A I don't -- I don't know anything about the Special
9 Commitment Center.

10 Q Tell me about the people who work at McNeil Island, are
11 those offenders?

12 A The McNeil Island stewardship are incarcerated
13 individuals.

14 Q Where are they incarcerated?

15 A Cedar Creek Corrections Officer.

16 Q There is a Special Commitment Center on McNeil Island?

17 A There is, yes.

18 Q Why don't the people on McNeil Island get to do the job
19 that the people mentioned here are doing?

20 MR. BERGER: Objection, foundation.

21 THE COURT: The objection is sustained.

22 BY MS. SCHEFFEY:

23 Q Why isn't the SCC or Special Commitment Center included in
24 Correctional Industries?

25 A They are not part of DOC.

1 Q Why are they not part of DOC?

2 MS. CHIEN: Objection, foundation.

3 BY MS. SCHEFFEY:

4 Q Sorry. You can say you don't know.

5 THE COURT: I think she can answer if she knows.

6 THE WITNESS: I don't know.

7 BY MS. SCHEFFEY:

8 Q Is every correctional facility in the state that holds
9 criminally held individuals eligible for participation in
10 Correctional Industries?

11 A We do go through a screening process. They all can apply
12 for Correctional Industries.

13 Q Is there a facility or a prison or jail, whatever you want
14 to call it, that cannot -- all of the people in their
15 categorically cannot participate in Correctional Industries?

16 A No. Like I said, they can all apply.

17 Q I think you testified earlier that SCC is not part of DOC,
18 that's why you don't know about it?

19 A Special Commitment Center is not ran by DOC, no.

20 Q The people there are not criminally held, correct?

21 MS. CHIEN: Objection, foundation.

22 THE COURT: The objection is sustained.

23 BY MS. SCHEFFEY:

24 Q The people who come to McNeil Island where we have
25 established there is a Special Commitment Center, what do

1 they do?

2 A So Class II workers, they work in our marine maintenance
3 department, they work on the operations team. They work in
4 the diesel shop.

5 Q What is at McNeil Island, other than the Special
6 Commitment Center?

7 A CI's operations, which is where we are overseeing the
8 maintenance of the island, our diesel shop. I think DOC does
9 have a training site out there. Not real familiar with that.
10 There is not a lot out there.

11 Q You said it is your operations. Have you been out there?

12 A I have.

13 Q Do you work out there?

14 A Daily?

15 Q Do you work out there regularly?

16 A No.

17 Q Do you work out there periodically?

18 A I go out -- I have probably been there three times -- I
19 have probably been there two times in the last year.

20 Q Are there residents of Washington who are not incarcerated
21 or detained out there that live there?

22 A Say that one more time.

23 Q Are there residents of Washington who are not held in
24 state custody who live there?

25 A I don't believe so.

1 Q Can you look at Exhibit 55 for me.

2 MR. BERGER: A-55.

3 MS. SCHEFFEY: Yes, sorry, Adam. At some point, I'll
4 get better.

5 THE WITNESS: I see it.

6 BY MS. SCHEFFEY:

7 Q Do you know what this is?

8 A Correctional Industries fact sheet.

9 Q That's created by Correctional Industries?

10 A Yes.

11 Q You are the Director of Correctional Industries?

12 A I am.

13 MS. SCHEFFEY: I offer to admit A-55.

14 MS. CHIEN: No objection.

15 MR. BERGER: No objection.

16 THE COURT: A-55 may be admitted.

17 (Exhibit A-55 was admitted.)

18 BY MS. SCHEFFEY:

19 Q On the second page of this document, you see a number
20 3,780,075?

21 A Yes.

22 Q What is that number?

23 A Total number of hours that are incarcerated individuals
24 programmed within CI.

25 Q Number of hours worked by Class II participants in the CI?

1 A Correct.

2 Q Is that number, barring COVID, usually about the same?

3 A I would only have to speculate.

4 Q You have worked at CI since 2019, correct?

5 A Correct.

6 Q In 2019, was the number about the same as this number?

7 A Off the top of my head -- I would have to look.

8 Q Does that number include Class III work?

9 A No.

10 Q About what percentage of people who are incarcerated are
11 in Class II work?

12 A We will -- we have about -- well, we average 2,000 workers
13 a year, given the average daily population. Last year,
14 probably the average daily population or two years ago was
15 around 17,000. So 2,000 of those.

16 Q 2,000 out of 17,000 participate in Correctional Industries
17 Class II work, correct?

18 A Correct.

19 Q Are the remainder eligible for Class III work?

20 A Again, I would speculate that they go through a process.
21 Class II is voluntary. I don't believe Class III is
22 voluntary. I would assume, yes.

23 Q Do you know if your Class II workers also work in Class
24 III work?

25 A No. They may have at some point, but they wouldn't do it

1 at the same time.

2 Q They don't do it simultaneously?

3 A Correct.

4 Q Class III work is done by some group other than those
5 2,000 people?

6 A Correct.

7 Q Fair to say this three million hours number doesn't
8 represent all the work done by inmates in DOC, correct?

9 A Correct.

10 Q We can take the exhibit down. We talked about the
11 products that CI makes. I want to talk about who CI sells
12 to. Organizations in the State of Washington, certain ones
13 are required to purchase from CI if it is cheaper than other
14 places, correct?

15 A State agencies are required to purchase from CI.

16 Q Is one of those agencies the University of Washington?

17 A The University of Washington is not -- I would have to
18 refresh my memory. I don't believe they are mandated.

19 Higher education, I don't believe is mandated to purchase.

20 Q What about the Attorney General's Office?

21 A State agencies are mandated to purchase from CI, unless
22 they seek exemptions.

23 Q Explain to me how that works.

24 A How what works?

25 Q How the mandated purchase works. You have a list of built

1 in customers; is that right?

2 A State agencies purchasing furniture. Furniture is the
3 biggest industry. They purchase from CI. Submit purchase
4 orders and go through the process order process.

5 Q You sell most of the furniture to state agencies around
6 the state; is that correct?

7 A I would say a good amount.

8 Q That furniture used by all the state agencies is made by
9 subminimum wage workers, correct?

10 A Made by our incarcerate individuals.

11 Q Because that's the law, you don't have to worry about
12 those customers going away?

13 A They can seek out exemptions.

14 Q They have to get a specific exemption before they cannot
15 purchase from you, correct?

16 A Correct.

17 Q How many organizations are you aware of that you know of
18 that got that exemption?

19 A I don't know the number off the top of my head. I have to
20 look.

21 Q Do you know any off the top of your head?

22 A I know there have been exemptions, but I couldn't tell you
23 which agency.

24 Q Correctional Industries also partners with private
25 industries, correct?

1 A They have -- did you say with private industries?

2 Q Yes, private industries. You provide workers to private
3 companies, correct?

4 A Well, I believe you are referring to Class I industries.

5 Q I am just asking generally if Correctional Industries --
6 if you agree that Correctional Industries provides workers to
7 private industry?

8 A We currently do not.

9 Q Why don't you look at Exhibit 44.

10 MR. BERGER: A-44.

11 BY MS. SCHEFFEY:

12 Q At the top it says "food services program." Does this
13 describe a Class II program or Class III?

14 A Food service falls under both.

15 Q Can you take a look at this document and see if it
16 describes a Class II program?

17 A Little of both, Class II and III.

18 Q Are you familiar with documents like this?

19 A I am.

20 Q Do you have any reason to believe this document isn't a
21 Department of Corrections food services program for Class II
22 and III workers?

23 A No.

24 THE COURT: I offer Exhibit A-44 for admission.

25 MS. CHIEN: No objection.

1 MR. BERGER: No objection.

2 THE COURT: A-44 may be admitted.

3 (Exhibit A-44 was admitted.)

4 BY MS. SCHEFFEY:

5 Q If you can go to the second page of the document which is
6 WA0009925.

7 A All right.

8 Q Talks about food service operations that will be
9 supervised by full-time employees who are experienced in food
10 service management. Does that describe Class II work in CI?

11 A It would describe both Class II and Class III.

12 Q I am trying to be cognizant of your distinction and not
13 ask you about Class III. My questions are about Class II,
14 for the rest of this document. About how many food service
15 staff do you have compared to incarcerated individuals who
16 are working in food service?

17 A I would be guessing to tell you an exact number.

18 Q What is the approximate ratio, 50/50, higher, lower?

19 A I don't know. I couldn't tell you.

20 Q In here, it talks about offenders being given 20 minutes
21 of dining time for each meal. Do you see that?

22 A Yep.

23 Q People who volunteer to work in the kitchen in CI, they
24 get a meal break in the middle of their shift; is that right?

25 A They do.

1 Q Do they eat the food they are preparing?

2 A They do.

3 Q Is that the same food that is provided to incarcerated
4 individuals across the state?

5 A Same menu, yes.

6 Q Can anyone else buy that food?

7 A Some facilities I know do have staff -- staff kitchens.
8 There may be some variations. I am not certain.

9 Q Can government agencies buy that food?

10 A Yes. We have jails that we contract with for food.

11 Q Explain to me how that works. Is there a big kitchen and
12 you are shipping it out in an inmates' facility?

13 A We have food service, food service programs, and
14 distribution, which is really different. Food distribution
15 makes and packages meals. Could be frozen meals which those
16 are what we sell to jails.

17 Q Do you sell those to federal contractors?

18 A I am not sure of all of our contracts.

19 Q Are you allowed to sell those to government contractors?

20 A To government agencies.

21 Q What about entities that contract with the government?

22 A Could you give me an example?

23 Q Air Mark, if they are going to provide services to one of
24 your jail facilities, you could sell the meals to them,
25 correct?

1 A I would have to check on that.

2 Q Sitting here today, do you know of any reason why you
3 couldn't sell to a government contractor?

4 A I can't answer that. I would have to seek clarification
5 on that.

6 Q I understand you would have to seek clarification.
7 Sitting here today, do you know any reason you could not sell
8 to a government contractor?

9 A Well, I really -- if I had to answer that, I would say no
10 today until I could check on it.

11 Q CI sells these meals to jails across the state to provide
12 meals to their detained individuals, correct?

13 A Yeah, I know there are contracts, yes.

14 Q CI earns revenue from those sales?

15 A We earn income.

16 Q Those meals are made with subminimum wage work, correct?

17 A They are made, yes, with our incarcerated workers.

18 Q If you will look at WA0009926 are the last four. Do you
19 see the section that says "purchasing"?

20 A Yes.

21 Q Purchases will be made in compliance with RCW 43.19. What
22 does that mean to you?

23 A Well, it means the purchases need to be in compliance with
24 that RCW.

25 Q Do you know what that RCW says?

1 A I don't know that off the top of my head. I would have to
2 pull the RCW.

3 Q When CI makes purchases, do you have any restrictions on
4 who you can buy things from?

5 A Well, we do a lot of things through -- I mean, we have to
6 go through the rules of Department of Enterprise Services. I
7 know we have contracts, and then I don't know the specific
8 restrictions. I would need to meet with our -- my AD in the
9 area.

10 Q Do you know if that directs you to buy from other
11 government agencies or anything like that?

12 A No, I am not aware.

13 Q Could you pull up Exhibit A-047, A-47? Do you recognize
14 this?

15 A No, I don't recognize this. I have seen this before, but
16 it is not something we use today.

17 Q Do you know if it was used in the past?

18 A Well, the only thing I can say is I see this document. I
19 don't really. I must assume.

20 Q At the top it says "correctional industry quarterly detail
21 statement."

22 A I see that.

23 Q What is a quarterly detail statement created by CI?

24 A We don't. This isn't a document of CI.

25 Q CI doesn't create quarterly detail statements?

1 A Not similar to this.

2 Q Do you know why the State would have produced it in this
3 format?

4 MS. CHIEN: Objection.

5 THE WITNESS: No, I don't.

6 MS. CHIEN: Go ahead. Sorry.

7 THE WITNESS: This statement, as I look at it, is all
8 about inmates, inmate counts. I don't know what that
9 document is.

10 BY MS. SCHEFFEY:

11 Q Do you track how many people work as barbers as part of
12 Correctional Industries?

13 A No.

14 Q Do you track how many people work as clerks as part of
15 Correctional Industries?

16 A For Class II clerks, each general manager within their
17 facility tracks their incarcerated workers.

18 Q Do you track how many people work as custodians for
19 Correctional Industries?

20 A We don't have custodians.

21 MS. SCHEFFEY: Can I make a record this was provided
22 by the State as something that is from Correctional
23 Industries? I am not sure what it is for. I would like to
24 make that record. The State produced this as a document from
25 Correctional Industries.

1 BY MS. SCHEFFEY:

2 Q Do you have barbers in Correctional Industries?

3 A No.

4 Q Do you know if Class III has barbers?

5 A I believe that is where the barbers fall is Class III.

6 Q That would be -- if they are in Class III, that would be
7 subminimum wage work, correct?

8 A That would be under the Class III gratuity scale, yes.

9 Q Class III gratuity scale, to be clear, is less than
10 minimum wage, correct?

11 A Correct.

12 Q Significantly less than minimum wage, right?

13 A Yes.

14 Q I am assuming it is the same thing. Why don't you look at
15 Exhibit 48. Let me know if that is something you would do.

16 MR. BERGER: A-48.

17 MS. SCHEFFEY: A-48. Yeah. Sorry.

18 THE WITNESS: I am not familiar with this Class III
19 report.

20 BY MS. SCHEFFEY:

21 Q Are there pretrial detainees who are allowed to work in
22 Correctional Industries?

23 A We don't have detainees. Those working in CI are
24 incarcerated.

25 Q In CI, do you know about individuals who are held on a

1 detrainer?

2 A No.

3 Q Can you look at Exhibit 22 again.

4 THE COURT: A-22?

5 MS. SCHEFFEY: A-22, yes. Sorry, Your Honor.

6 BY MS. SCHEFFEY:

7 Q I will direct you to a page. At the bottom, it says 48.
8 It is 11547. Are you on that page?

9 A I am.

10 Q Does that refresh your recollection as to whether people
11 are held under a detrainer?

12 A In my role, I am not familiar with detrainers.

13 Q Are you familiar with the Department of Corrections
14 holding people for immigrations after their sentence is done?

15 A No, I am not familiar with that.

16 Q You testified earlier you have had 20 years plus
17 experience in Department of Corrections; is that right?

18 A That is correct.

19 Q Do you know anything about Yakima County Jail?

20 A I am familiar with Yakima County Jail.

21 Q Are you aware the State has an agreement with the federal
22 government to hold ICE detainees at Yakima County?

23 MS. CHIEN: Objection, assuming facts not in
24 evidence.

25 THE COURT: She may answer.

1 THE WITNESS: No.

2 BY MS. SCHEFFEY:

3 Q Does Yakima County have any of the work programs we have
4 discussed today?

5 A No. No CI work. No Class II program.

6 Q Does Yakima County Jail have Class III work programs?

7 A I don't know.

8 Q Didn't you testify earlier today that every jail or county
9 or local in the state of Washington offers a work program?

10 MR. BERGER: Objection, misstates testimony.

11 THE COURT: Sustained.

12 BY MS. SCHEFFEY:

13 Q Are you aware of any jail in the state of Washington that
14 does not offer a work program?

15 A I don't know about jails.

16 Q What about prison?

17 A Our 12 facility -- DOC facilities offer programs.

18 Q You are not aware of any reason sitting here today why a
19 federal contractor couldn't buy meals from Correctional
20 Industries and use them in their own detention facility,
21 correct?

22 MR. BERGER: Objection, asked and answered.

23 THE COURT: Double negative in there somewhere.

24 Rephrase the question.

25

1 BY MS. SCHEFFEY:

2 Q Are you familiar with the Correctional Industries statute?

3 A With the Correctional Industries statute?

4 Q Yeah.

5 A I have read through it.

6 Q Are you familiar with the WAC for the Correctional
7 Industries?

8 A I have read through them.

9 Q Do those regulations tell you who you can and cannot sell
10 to from Correctional Industries?

11 A They do.

12 Q If you were to look at that law, would it refresh your
13 recollection about who can buy from Correctional Industries?

14 A Yeah. As I mentioned, we sell to other state agencies,
15 non-profits, tribe.

16 MS. SCHEFFEY: Can we get a copy of that in front of
17 her to refresh her recollection?

18 MS. CHIEN: Tell me the statute.

19 MS. SCHEFFEY: Chapter 137-80 of the WAC.

20 MS. CHIEN: Are you talking about the regulation?

21 THE COURT: That's not a statute. That's a
22 regulation.

23 MS. SCHEFFEY: She said she was familiar with the
24 WAC. Is someone over there emailing it?

25 MS. CHIEN: Can you tell us what section of the

1 regulation you are referring to?

2 MS. SCHEFFEY: She said it would refresh her
3 recollection. I was going to give her the whole section so
4 she can look at it.

5 MS. CHIEN: 137-80?

6 MS. SCHEFFEY: There is the purpose. You want me
7 direct her to --

8 MS. CHIEN: It will take us a very long time to print
9 out the entire thing. We are trying to get you to tell us
10 which chapter you are referring to.

11 MS. SCHEFFEY: Section called sale of goods, that is
12 relevant. 137-80-40, sale of goods.

13 MS. CHIEN: I will print it now.

14 MS. SCHEFFEY: I will tell you the RCW, 72.01.090.

15 THE COURT: Are we going to have a question for the
16 witness?

17 MS. SCHEFFEY: Yes, Your Honor.

18 BY MS. SCHEFFEY:

19 Q If the statute said you can sell to a private contractor
20 as long as they are serving a government, would that be
21 accurate?

22 MR. BERGER: Object to form. Assumes facts not in
23 evidence.

24 MS. SCHEFFEY: That's why I am trying to refresh her
25 recollection, Your Honor.

1 THE COURT: You are asking her if the law as you
2 paraphrased it is accurate. The objection is sustained.

3 MS. SCHEFFEY: Yes, Your Honor, that's why the
4 question pending before -- this is easy in open court when
5 you can hand someone the document. The question before is
6 whether the law would refresh her recollection. She said
7 yes. That's what I am trying to get to her.

8 Marsha, I am emailing you something to print for the
9 witness. I will use it for impeachment or to refresh her
10 recollection or pull up on her screen.

11 MS. CHIEN: We just found it. We are giving her
12 WAC -- the WAC 137-80-040.

13 THE COURT: Someone should explain to the jury that
14 the Revised Code of Washington is commonly referred to as
15 RCW. That is the law as passed by the state legislature with
16 the approval of the governor. That is the law of the State
17 of Washington. The Washington Administrative Code is made up
18 of administrative regulations adopted by various agencies in
19 order to implement the laws passed by the legislature. If I
20 am in error, counsel, you can correct me now.

21 MS. SCHEFFEY: Does the witness have in front of you
22 72-09 --

23 MS. CHIEN: No, we are having a hard time keeping up.

24 MS. SCHEFFEY: Please print that.

25 MR. BERGER: Can you repeat the code section?

1 MS. SCHEFFEY: 72.09.100. If the witness would let
2 me know when she has 72.09.100 or if she can find it in the
3 WAC.

4 BY MS. SCHEFFEY:

5 Q If you have 72.09.100 in front of you, I can direct you to
6 the section --

7 A I don't have it in front of me.

8 MS. CHIEN: We are printing it now.

9 THE COURT: We have run out of time. It is almost
10 quitting time. We don't have time to have her look at it and
11 then go to further questions. We will break for the evening
12 and hopefully counsel can get your kit together on this for
13 the witness before tomorrow morning at 9:00 where -- when I
14 will ask the jurors to return. Come back tomorrow morning at
15 9:00. We have one more day in this week. We are progressing
16 along. I don't want to try and estimate how much longer
17 before the first phase of the case will be put to you. It
18 still will be awhile.

19 Follow my instructions about recesses, please. Don't
20 think about the case when you are not in court. Keep your
21 minds open on all issues. Come back tomorrow at 9:00 and we
22 will continue with Ms. Sytsma at that time.

23 Thank you very much, folks. You may be excused.

24 (The following occurred outside the presence of the jury.)

25 THE COURT: Counsel, I was perhaps naive in my

1 expectations. I thought that you had -- part of your
2 obligation was to have the exhibits you were going to use on
3 cross-examination ready and available for the witnesses. I
4 don't know. Maybe, I guess I am wrong because that has not
5 been the case so far. You are burning a lot of your time up
6 looking for exhibits. I would hope you would think ahead and
7 plan ahead for examination a little more carefully. I know
8 this is asking you to do stuff that I don't know how to do so
9 it may be -- it is beyond my knowledge. It may be beyond
10 yours, too. I don't know. We moved awful slow today.

11 Okay. See you in the morning.

12 (The proceedings adjourned.)
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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/s/ Angela Nicolavo

ANGELA NICOLAVO
COURT REPORTER